(6) (3)

NOS. 87-470 AND 87-614

Supreme Court, U.S.
FILED
MAY 13 1988
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1987

o

No. 87-470

FORT WAYNE BOOKS, INC.,

Petitioner,

vs.

STATE OF INDIANA, *et al.*,

Respondents.

No. 87-614

RONALD W. SAPPENFIELD, *et al.*,

Petitioners,

vs.

STATE OF INDIANA,

Respondent.

o

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF INDIANA AND THE INDIANA COURT OF APPEALS

o

JOINT APPENDIX

o

JOHN H. WESTON*
DAVID M. BROWN
G. RANDALL GARROU
Brown, Weston & Sarno
433 N. Camden Drive,
Suite 900
Beverly Hills, CA 90210
(213) 550-7460
Counsel for Petitioner Fort Wayne Books, Inc.

RICHARD KAMMEN*
McClure, McClure & Kammen
235 N. Delaware St.
Indianapolis, IN 46204
(317) 632-6341
Counsel for Petitioners in No. 87-614

LINLEY E. PEARSON
Attorney General of Indiana
WILLIAM E. DAILY*
Deputy Attorney General
Office of Attorney General
219 State House
Indianapolis, IN 46204
(317) 232-6217
Counsel for Respondents State of Indiana and Stephen M. Sims

STEPHEN GOLDSMITH
Marion County Prosecutor
560 City-County Building
Indianapolis, IN 46204
(317) 236-3522
Counsel for Respondent Goldsmith in 87-470

*Counsel of Record

Petition for Certiorari in No. 87-470 Filed Sept.16, 1987
Certiorari in No. 87-470 Granted March 7, 1988
Petition for Certiorari in No. 87-614 Filed Oct. 14, 1987
Certiorari in No. 87-614 Granted March 7, 1988

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

187 P

TABLE OF CONTENTS

Page

I. *State of Indiana, et al. v. Fort Wayne Books, et al.*

Relevant docket entries 1

Allen Circuit Court 1

Indiana Court of Appeals 3

Indiana Supreme Court 5

Allen Circuit Court

Complaint for Injunctive Relief from Corrupt Business Influence and Action for Forfeiture of Property Incident to Corrupt Business Influence 7

Verified Petition for Seizure of Property Subject to Forfeiture and Probable Cause Affidavit 50

Seizure Order 79

Request [of Individual Defendants Krontz, Brooks, and Johnson, Not Parties Herein] for Extension of Time [in which to respond to complaint] 84

Orders: (1) denying Motion for Stay Pending Appeal filed April 3, 1984; (2) denying Motion for Stay Pending Appeal filed April 12, 1984; and (3) granting Petition to Certify Interlocutory Appeal filed April 13, 1984 and granting Supplemental Petition to Certify filed April 12, 1984 85

Indiana Court of Appeals

Defendants' Request for Expeditious Ruling on Motion for Stay filed in Court of Appeals 87

State's Opposition to Defendants' Request for Expeditious Ruling on Motion for Stay 95

TABLE OF CONTENTS—Continued

Page

Order of Court of Appeals granting stay pending appeal ____ 96

Opinion (*4447 Corporation v. Goldsmith*) (printed as Appendix C to Certiorari Petition, Cert. App. 28-98.) ____ 98

Indiana Supreme Court

Opinion (*4447 Corporation v. Goldsmith*) (printed as Appendix A to Certiorari Petition, Cert. App. 1-19.) ____ 99

Denial of Rehearing (printed as Appendix E to Certiorari Petition, Cert. App. 105-112.) ____ 99

II. *Goldsmith v. 4447 Corporation, et al.*

Relevant docket entries ____ 100

Marion Circuit Court ____ 100

Hamilton Circuit Court ____ 100

Marion Circuit Court

Complaint ____ 103

Verified Petition for Seizure of Property and Affidavit ____ 113

Motion to Continue [hearing set for August 4, 1983] ____ 121

Amended Complaint ____ 123

Hamilton Circuit Court

Motion to Continue [Deposition] ____ 131

Indiana Court of Appeals

Order [Granting Stay] ____ 133

TABLE OF CONTENTS—Continued

Page

III. *State of Indiana v. Ronald W. Sappenfield, et al.*

Relevant docket entries, Howard Superior Court 135

Informations ____ 138, 139, 141, 142, 144, 145, 146, 148

Motion to Dismiss and Memorandum ____ 150

State's Reply to the Motion to Dismiss ____ 168

The Trial Court's Ruling on the Motion to Dismiss ____ 173

The Opinion of the Court of Appeals of Indiana 176

Denial of Rehearing (Indiana Court of Appeals) 182

Denial of Petition to Transfer (Indiana Supreme Court) ____ 183

STATE OF INDIANA, et al. v. FORT WAYNE BOOKS, et al.

RELEVANT DOCKET ENTRIES

Date of Filing	ALLEN CIRCUIT COURT
3/19/84	Comes now Plaintiff, by counsel and files Complaint for Injunctive Relief From Corrupt Business Influence And Action For Forfeiture Of Property Incident To Corrupt Business Influence And Verified Petition For Seizure Of Property Subject To Forfeiture And Probable Cause Affidavit.
3/19/84	State of Indiana and its Prosecuting Attorney for the 38th judicial circuit submit evidence. Probable cause found. Order issued for seizure and forfeiture.
3/23/84	Come now defendants, Fort Wayne Books, Cinema Blue & Erotica House Bookstore and file a Motion To Vacate And/Or Modify Order which is now set for hearing on March 29, 1984.
3/27/84	Come now defendants, by counsel, and file Motion For Protective Order. The Court hereby approves the same.
3/27/84	Comes now defendant, by counsel, and files Supplemental Motion to Dismiss Order of Court entered March 19, 1984 and Memorandum of Law Re: Court Order.
3/29/84	Plaintiffs file Response To Defendants' Motion To Vacate Or To Modify Court Order Entered And Filed On March 19, 1984 and Defendants' Supplemental Motions To Dismiss. Defendants' motions to vacate or modify and to dismiss are denied. Defendants file Motion to Stay Pending Appeal. Denied without preju-

dice to reapply if proper application for Interlocutory Appeal is made and perfected.

4/3/84 Defendants, Fort Wayne Books, Inc., Cinema Blue of Fort Wayne, Inc., and Erotica House Bookstore, Inc., by counsel, file praecipe for transcript of entire record, emergency motion for inventory of property removed and/or return of property, petition to certify issues and grounds to the Indiana Court of Appeals upon interlocutory order of March 19, 1984, . . . and motion for stay pending appeal.

4/4/84 Plaintiff files Answers To Emergency Motion For Inventory Of Property Removed And/Or Return Of Property. Motion For Inventory is moot as having been provided and [motion] for return of property is in all respects denied.

4/12/84 Defendants, Fort Wayne Books, Inc., Cinema Blue of Fort Wayne, Inc., and Erotica House Bookstore, Inc., by counsel file: Assignment of Error; Supplemental and Consolidated Petition to Certify Issues and Grounds to the Indiana Court of Appeals Upon Interlocutory Order of March 19, 1984 under Indiana Rules of Appellate Procedure Rule 4(B)(6); and Motion for Stay [Pending] Appeal.

4/17/84 Plaintiff, by counsel files: Response to "Supplemental and Consolidated Petition to Certify Issues and Grounds to the Indiana Court of Appeals . . ."; Response to Defendants' Motions for Stay Pending Appeal; and Lis Pendens Notice.

4/18/84 Court DENIES in their entirety Defendants', Fort Wayne Books, Inc., Cinema Blue of Fort Wayne, Inc., Erotica House Bookstore, Inc.; (1) Motion for Stay Pending Appeal filed 4/3/84; (2) the Assignment of Error and (3) Motion for Stay Pending Appeal filed 4/12/84;

grants . . . the Petition to Certify filed 4/3/84 and the Supplemental Petition to Certify filed 4/12/84 . . . . The Court files its written order of certification pursuant to request and App. Rule 4(B)(6). The Court further finds that the parties have proceeded diligently in respect to prosecution of this cause for consideration as an appealable interlocutory order. Praecipe for Transcript of Entire Record is filed.

6/26/84 Notice received from Court of Appeals. Extension of time to file record of proceedings, granted to and including June 30, 1984.

4/8/85 Copy of Order from Indiana Court of Appeals [staying seizure of defendants' property] received and noted. Order of this Court dated March 19, 1984 modified to conform thereto.

5/12/85 Unofficial Opinion received and filed this date from the Court of Appeals of Indiana.

INDIANA COURT OF APPEALS

12/15/83 Motion for Stay (Modification) of Interlocutory Injunction without Bond Pending Appeal [in *4447 Corporation v. Goldsmith*]

1/3/84 Brief of Appellants [*4447 Corporation v. Goldsmith*]

1/18/84 Brief of Appellee [*4447 Corporation v. Goldsmith*]

2/2/84 It is therefore Ordered, Adjudged and Decreed by the Court that the Order heretofore entered by the Circuit Court of Marion County, The Honorable Anthony J. Metz, Judge Pro Tem presiding, in Cause No. C83-1788, dated August 1, 1983, is hereby modified pending appeal in the following respects:

A. That the Indianapolis Police Department shall forthwith unlock, unseal and release all

property within the commercial building at 4266 (erroneously designated 4276) West 38th St., Marion County, Indiana, which property had heretofore been locked, sealed and secured pursuant to the Order of the Marion County Circuit Court, filed August 1, 1983; and

B. Defendants shall preserve all property at 4266 West 38th Street, Marion County Indiana until further order of this Court; defendants shall not transfer or remove from said Building any fixtures, cabinets, cameras, audio or video equipment, cash registers or other property until further order of this Court. This paragraph shall not prevent defendants at 4266 West 38th Street, Marion County, Indiana, from transferring or selling books, magazines, newspapers or videotapes. However, until further order of this Court, all other property shall be held by the defendants.

4/18/84 Verified Petition to Certify Issues and Grounds to the Indiana Court of Appeals upon Interlocutory Order of March 19, 1984 [*Fort Wayne Books v. Sims*]

4/27/84 Motion for Stay (Modification) of Interlocutory Injunction without Bond Pending Appeal [in *Fort Wayne Books v. Sims*]

5/2/84 ORDER OF CONSOLIDATION: IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Cause No. 3-484A106 as hereinabove captioned be and the same hereby is consolidated with Cause No. 4-1283A415 as hereinabove captioned for a determination of the common question of law therein presented. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said causes of action

hereinabove consolidated be and the same hereby are consolidated under Cause No. 4-1283A415.

[6/84] [Brief of Appellants, Fort Wayne Books, Inc., et al.]

7/23/84 Brief of Appellees State of Indiana and Stephen Sims

9/25/84 Request for Expeditious Ruling on Motion for Stay (Modification) [in *Fort Wayne Books v. Sims*]

10/10/84 State's Response to Request for Expeditious Ruling on Motion for Stay

4/ 4/85 *ORDER*: IT IS THEREFORE ORDERED that the Order heretofore entered by the Allen Circuit Court, the Honorable Thomas L. Ryan, Judge, presiding, in Cause Number CC84-446 of said Court, dated March 19, 1984, is hereby modified, and ordered to conform with the stay heretofore made and entered in the *4447 Corporation* case, pending the further order of this Court. A written opinion on the merits of the appeal will imminently follow this order.

6/12/85 [Opinion of Court of Appeals]

INDIANA SUPREME COURT

5/ 2/84 Appellees' Verified Petition for Transfer of [Consolidated] Case to the Supreme Court of Indiana

7/17/84 ORDER: This Court being duly advised in the premises now DENIES the "Appellees' Verified Petition(s) for Transfer of Case(s) to the Supreme Court of Indiana. The consolidated cases are remanded to the Indiana Court of Appeals for consideration and decision. Additionally, appellants' "Motion for Stay (Modification) of Interlocutory Injunction Without Bond Pending Appeal" under cause no. 3-484 A 106 is also

remanded to the Court of Appeals for disposition.

8/ 8/85 Appellees' Petition to Transfer [following decision of Court of Appeals]

8/23/85 Appellants' Memorandum in Opposition to Appellee's Petition to Transfer

3/26/86 [Appellants'] Supplemental Citations to Authorities Mentioned in Argument

7/16/86 State's Submission of Supplemental Authority

9/ 9/86 Response to Appellees' Submission of Supplemental Authority; Appellants' Memorandum Re Significance of *Arcara v. Cloud Books, Inc.*

1/20/87 Appellees' Additional Authority

3/ 2/87 Appellee's "Petition to Transfer" is hereby GRANTED, with opinion.

3/21/87 Appellants' Petition for Rehearing

6/18/87 "Appellants' Petition for Rehearing" is hereby denied.

8/19/87 Petition [of Burke H. Mendenhall] for Stay of Execution in Connection with Petition for Certiorari

9/ 2/87 ORDER: This Court now denies the "Petition for Stay of Execution in Connection with Petition for Certiorari," as this Court is without jurisdiction over this matter.

3/ 7/88 United States Supreme Court Issued the Enclosed Order: The Petition herein for a Writ of Certiorari to the Supreme Court of the State of Indiana is Granted.

IN THE ALLEN CIRCUIT COURT
CAUSE NO. CC-84-446

STATE OF INDIANA)
) ss
COUNTY OF ALLEN)

STATE OF INDIANA AND)
STEPHEN M. SIMS, PROSECUTING)
ATTORNEY FOR THIRTY-EIGHTH)
JUDICIAL CIRCUIT,)
Plaintiff,)
vs.)
)
FORT WAYNE BOOKS, INC.,)
CINEMA BLUE OF FORT WAYNE,)
INC., EROTICA HOUSE)
BOOKSTORE, INC., MR. DONALD)
KRONTZ; MR. DONALD KRONTZ)
IN HIS CAPACITY AS MANAGER)
OF FORT WAYNE BOOKS, INC.,)
MANAGER OF CINEMA BLUE OF)
FORT WAYNE, INC., MANAGER)
OF EROTICA HOUSE BOOK-)
STORE, INC.; MR. DONALD)
KRONTZ IN HIS CAPACITY AS A)
MEMBER OF THE BOARD OF)
THE BOARD OF DIRECTORS OF)
FORT WAYNE BOOKS, INC.,)
CINEMA BLUE OF FORT WAYNE,)
INC., EROTICA HOUSE BOOK-)
STORE, INC.; MARK A BROOKS,)
THE GROUP d/b/a/ EUROPEAN)
INVESTMENTS N V, THE GROUP)
d/b/a THEATRE A CORPORATION,)
NANCY S. JOHNSON,)
CYRUS B. COOPER,)
Defendants.)

COMPLAINT FOR INJUNCTIVE RELIEF FROM CORRUPT BUSINESS INFLUENCE AND ACTION FOR FORFEITURE OF PROPERTY INCIDENT TO CORRUPT BUSINESS INFLUENCE

Comes now Stephen M. Sims as Prosecuting Attorney for the Thirty-Eighth Judicial Circuit of the State of Indiana and brings this civil action for injunctive relief and forfeiture of property incident to corrupt business influence, pursuant to Indiana Code 34-4-30.5-2, 34-4-30.5-3, and alleges that said action is brought to enjoin a violation of Indiana Code 35-45-6-2 and violations of Indiana Code 35-30-10.1-2 and violations of Indiana Code 35-49-3-1 and in his capacity as Prosecuting Attorney of said Thirty-Eighth Judicial Circuit alleges as follows:

I.

That the defendant Fort Wayne Books, Inc. has since the 8th day of June, 1981, up to and including the date of the filing of this complaint:

a) offered to distribute, distributed, or exhibited to another person obscene matter; and

b) that said Fort Wayne Books, Inc. has during said period of time attempted to commit, or conspired to commit, or aided and abetted in a violation of Indiana Code 35-30-10-2 and Indiana Code 35-49-3-1 and Indiana Code 35-45-6-2; and

c) that Fort Wayne Books, Inc. has "associated in fact" with Cinema Blue of Fort Wayne, Inc., Erotica House Bookstores, Inc., Donald Krontz personally and as a manager and member of the board of directors of the aforesaid corporations, the other defendants named herein and individuals not known to your plaintiff, in at least two incidents of racketeering activity that have had the same or similar intent, result, accomplice, victim, or method of commission and that as a result of such actions the defendant Fort Wayne Books, Inc. has received proceeds directly or indirectly derived from a pattern of racketeering activity; and

d) that said corporation has used or invested those proceeds to acquire an interest in real property or to establish or to operate the enterprise; and

e) that through said pattern of activity said corporation has knowingly or intentionally acquired or maintained, either directly or indirectly, an interest in or control of real property or an enterprise; and

f) that said corporation has employed Donald Krontz and others not known to your plaintiff who have been employed and associated with the enterprise and who knowingly or intentionally, on a daily basis, conducted or otherwise participated in the activities of that enterprise through a pattern of "racketeering activity".

In support thereof your plaintiff further alleges as follows:

1. That Fort Wayne Books, Inc. is an Indiana Corporation which began its corporate existence on the 4th day of April, 1979, and which has continued in existence up to and including the date of the filing of this complaint.

2. That the Certificate of Incorporation of Fort Wayne Books, Inc. under Article IV establishes the name and address of the corporate resident agent for service of process as C T Corporation System and listed its address as 1011 Merchants Bank Building, Indianapolis, Indiana 46204, and that said Articles of Incorporation indicate that the principal office of said corporation and the post office address of the corporation is 1011 Merchants Bank Building, Indianapolis, Indiana 46204.

3. That said Fort Wayne Books, Inc. has from 1981 up to and including the date of the filing of this complaint operated its principal activities and acts at 227 West Pearl Street, Fort Wayne, Allen County, Indiana.

4. That on July 1, 1983 and, to the best of your petitioner's knowledge, up to the date of the filing of this complaint Donald Krontz was employed by Fort Wayne Books, Inc. as the manager of said corporation and was simultaneously employed by Cinema Blue of Fort Wayne, Inc. as the manager of that corporation and was employed by Erotica House Bookstore, Inc. as the manager of that corporation. That simultaneously Mr. Donald Krontz is and has been a member of the board of directors of all three of said corporations.

5. That on or about the 8th day of June, 1981, Fort Wayne Books, Inc. was also known as Main Street Swinger World Adult News and Peep Show and that it operated a store in Allen County, Indiana, at 227 Pearl Street, and that said corporation did on the 8th day of June, 1981 violate Indiana Code 35-30-10.1-2 in that its human agent, Allen H. Sedelbauer, did sell obscene materials to Officer Charles Dennis of the Fort Wayne Police Department and that said corporation was convicted by the Allen Superior Court in Cause No. CRM-81-10113 of two counts of violation of Indiana Code 35-30-10.1-2, Sale of Obscene Matter.

6. That on June 15, 1981 Allen H. Sedelbauer did knowingly distribute obscene matter for consideration in violation of Indiana Code 35-30-10.1-2 to Charles Dennis, a Fort Wayne police officer. That said Allen H. Sedelbauer was convicted by the Allen Superior Court in Cause No. CRM-81-10114 of said violation. That at the time of said offense said Allen H. Sedelbauer was an agent of the corporation acting within his actual authority in the normal course of business at 227 Pearl Street, Fort Wayne, Indiana, for and on behalf of Fort Wayne Books, Inc.

7. That on the 11th day of February, 1982 Allen H. Sedelbauer did knowingly distribute obscene matter for consideration in violation of Indiana Code 35-30-10.1-2 by selling said obscene matter to a Fort Wayne police officer. That Allen H. Sedelbauer was convicted by the Allen Superior Court in Cause No. CRM-82-2771 of said violation. That at the time of said offense Allen H. Sedelbauer was an agent of the corporation acting within his actual authority in the normal course of business at 227 Pearl Street, Fort Wayne, Indiana, for and on behalf of Fort Wayne Books, Inc.

8. That on or about the 10th day of June 1982 Fort Wayne Books, Inc. operated a store in Allen County, Indiana, at 227 Pearl Street, and that said corporation did on the 10th day of June, 1982 violate Indiana Code 35-30-10.1-2 in that its human agent, James D. Harp, did sell obscene materials to a Fort Wayne police officer and that said corporation was convicted by the Allen Superior Court in Cause No. CRM-82-14255 of said violation.

9. That on or about the 9th day of August, 1982 Fort Wayne Books, Inc. operated a store in Allen County, Indiana, at 227 Pearl Street, and that said corporation did on the 9th day of August, 1982 violate Indiana Code 35-30-10.1-2 in that its human agent, Barry W. Dangler, did sell obscene materials to a Fort Wayne police officer and that said corporation was convicted by the Allen Superior Court in Cause No. CRM-82-14253 of said violation.

10. That on or about the 28th day of September, 1982 Fort Wayne Books, Inc. operated a store in Allen County,

Indiana, at 227 Pearl Street, and that said corporation did on the 28th day of September, 1982 violate Indiana Code 35-30-10.1-2 in that its human agent, Daniel L. Morgan, did sell obscene materials to a Fort Wayne police officer and that said corporation was convicted by the Allen Superior Court in Cause No. CRM-82-22385 of said violation.

11. That on or about the 29th day of September, 1982 Fort Wayne Books, Inc. operated a store in Allen County, Indiana, at 227 Pearl Street, and that said corporation did on the 29th day of September, 1982 violate Indiana Code 35-30-10.1-2 in that its human agent, Daniel L. Morgan, did sell obscene materials to a Fort Wayne police officer and that said corporation was convicted by the Allen Superior Court in Cause No. CRM-82-22386 of said violation.

12. That on or about the 1st day of December, 1982 Fort Wayne Books, Inc. operated a store in Allen County, Indiana, at 227 Pearl Street, and that said corporation did on the 1st day of December, 1982 violate Indiana Code 35-30-10.1-2 in that its human agent, Anthony Leedy, did sell obscene materials to a Fort Wayne police officer and that said corporation was convicted by the Allen Superior Court in Cause No. CRM-82-22452 of said violation.

13. That on or about the 9th day of May 1983, Fort Wayne Books, Inc. did employ one Mark A. Brooks, who was associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for said Fort Wayne Books, Inc. within his actual authority and in the normal course of business at said Fort Wayne Books, Inc. within his actual authority and in the normal course of business at said corporation's business address, that is 227 Pearl Street, Fort Wayne,

Allen County, Indiana, did on the 9th day of May, 1983, at the County of Allen in the State of Indiana, then and there unlawfully and knowingly distribute obscene material for consideration in violation of Indiana Code 35-30-10.1-2 by selling a certain obscene publication, to-wit: a magazine entitled "Punk Dominatrix". That said defendant was convicted in the Allen Superior Court for "Distributing Obscene Matter for Consideration" in Count I of Cause No. CR-83-386.

14. That on or about the 13th day of May, 1983, Fort Wayne Books, Inc. did employ one Mark A. Brooks, who was associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for said Fort Wayne Books, Inc. within his actual authority and in the normal course of business at said corporation's business address, that is 227 Pearl Street, Fort Wayne, Allen County, Indiana, did on the 13th day of May, 1983, at the County of Allen and in the State of Indiana, then and there unlawfully and knowingly distribute obscene matter for consideration in violation of Indiana Code 35-30-10.1-2, to-wit: by selling a certain obscene publication, to-wit: a magazine entitled "Kinky Mistress". That said defendant was convicted in the Allen Superior Court of "Distributing Obscene Matter for Consideration" in Count II of Cause No. CR-83-386.

15. That on or about the 3rd day of June, 1983, Fort Wayne Books, Inc. did employ one Mark A. Brooks, who was associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for said Fort Wayne Books, Inc. within his actual

authority and in the normal course of business at said corporation's business address, that is 227 Pearl Street, Fort Wayne, Allen County, Indiana, did on the 3rd day of June 1983, at the County of Allen and in the State of Indiana, then and there unlawfully and knowingly distribute obscene matter for consideration in violation of Indiana Code 35-30-10.1-2, to-wit: by selling a certain obscene publication, to-wit: a magazine entitled "Breast Bondage". That said defendant was convicted in the Allen Superior Court of "Distributing Obscene Matter for Consideration" in Count III of Cause No. CR-83-386.

16. That on or about the 9th day of May, 1983, Fort Wayne Books, Inc. did employ one Daniel L. Morgan, who was associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for said Fort Wayne Books, Inc. within his actual authority and in the normal course of business at said corporation's business address, 227 Pearl Street, Fort Wayne, Allen County, Indiana, on the 9th day of May, 1983, at the County of Allen and in the State of Indiana, said Daniel L. Morgan did then and there violate Indiana Code 35-30-10.1-2 in that he unlawfully and knowingly distributed obscene matter for consideration, to-wit: by selling a certain obscene publication, to-wit: a magazine entitled "Fantasy World". That said defendant was convicted in the Allen Superior Court of "Distributing Obscene Matter for Consideration" in Count I of Cause No. CR-83-384.

17. That on or about the 10th day of May, 1983, Fort Wayne Books, Inc. did employ one Daniel L. Morgan, who

was associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for said Fort Wayne Books, Inc. within his actual authority and in the normal course of business at said corporation's business address, 227 Pearl Street, Fort Wayne, Allen County, Indiana, on or about the 10th day of May, 1983, at the County of Allen and in the State of Indiana, said Daniel L. Morgan did then and there violate Indiana Code 35-30-10.1-2 in that he unlawfully and knowingly distributed obscene matter for consideration, to-wit: by selling a certain obscene publication, to-wit: a magazine entitled "Kinky Mistress". That said defendant was convicted in the Allen Superior Court of "Distributing Obscene Matter for Consideration" in Count II of Cause No. CR-83-384.

18. That on or about the 7th day of June, 1983, Fort Wayne Books, Inc. did employ one Daniel L. Morgan, who was associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for said Fort Wayne Books, Inc. within his actual authority and in the normal course of business at said corporation's business address, 227 Pearl Street, Fort Wayne, Allen County, Indiana, on or about the 7th day of June, 1983, at the County of Allen, State of Indiana, said Daniel L. Morgan did then and there violate Indiana Code 35-30-10.1-2 in that he unlawfully and knowingly distributed obscene matter for consideration, to-wit: by selling a certain obscene publication, to-wit: a magazine entitled "Hard". That said defendant was convicted in the

Allen Superior Court of "Distributing Obscene Matter for Consideration" in Count III of Cause No. CR-83-384.

19. That on or about the 29th day of November, 1983, and on the 1st day of December, 1983, Fort Wayne Books, Inc. did employ one Nancy S. Johnson who was associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for said Fort Wayne Books, Inc. within her actual authority and in the normal course of business at said corporation's business address, 227 Pearl Street, Fort Wayne, Allen County, Indiana, she did respectively, on or about the 29th day of November, 1983, and the 1st day of December, 1983, at the County of Allen, State of Indiana, then and there violate Indiana Code 35-49-3-1 in that she unlawfully and knowingly distributed obscene matter for consideration by selling (respectively) a certain obscene publication, to-wit: a magazine entitled "Rope Party" and a magazine entitled "Shackled". That said Nancy S. Johnson was convicted of two counts of "Distributing Obscene Matter for Consideration" in the Allen Superior Court in Cause No. CR-83-509.

20. That on or about the 21st day of November, 1983, and the 5th day of December, 1983, Fort Wayne Books, Inc. did employ one Mark A. Brooks who was associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for said Fort Wayne Books, Inc. within his actual authority and in the normal course of business at said corporation's business address, 227 Pearl Street, Fort Wayne, Allen

County, Indiana, he did respectively on or about the 21st day of November, 1983, and the 5th day of December, 1983, at the County of Allen, State of Indiana, then and there violate Indiana Code 35-49-3-1 in that he unlawfully and knowingly distributed obscene matter for consideration, to-wit: by selling (respectively) a certain obscene publication, to-wit: a magazine entitled "Bondage" and a magazine entitled "Corporal". That said Mark A. Brooks was convicted of two counts of "Distributing Obscene Matter for Consideration" in Allen Superior Court Cause No. CR-83-513.

21. That Fort Wayne Books, Inc. and A Group d/b/a European Investments N V, in addition to the aforesaid acts, has on a daily basis from the 8th day of June, 1981 up to and including the date of the filing of this complaint used the real estate commonly known as 227 Pearl Street, Fort Wayne, Allen County, Indiana, as a place to offer to distribute, distribute, and exhibit to other persons obscene matter.

22. That Fort Wayne Books, Inc. and A Group d/b/a European Investments N V, in addition to the aforesaid acts, has on a daily basis from the 8th day of June, 1981 up to and including the date of the filing of this complaint:

a) used the real estate commonly known as 227 Pearl Street, Fort Wayne, Allen County, Indiana, as a place to gather for distribution, display, and offer to other persons for consideration similar obscene matter and have continued to commit, or attempt to commit, or conspire to commit, or to aid and abet in the violation of Indiana Code 35-45-6-2 and Indiana Code 35-30-10. 1-2 or 35-49-3-1;

b) that title to said real property commonly known as 227 Pearl Street, Fort Wayne, Indiana, is vested in

a Group d/b/a European Investments N V, P.O. Box 408, Durand, Michigan 48429, and that said European Investments N V constitutes part of an enterprise whose activity has resulted in the receipt of proceeds, directly or indirectly, derived from a pattern of racketeering activity and that said group has used the proceeds derived from such activities to acquire an interest in real property or to establish or to operate an enterprise; and that said group has knowingly or intentionally acquired or maintained, either directly or indirectly, an interest in or control of the real estate commonly known as 227 Pearl Street, Fort Wayne, Allen County, Indiana, and all of the contents therein, or an enterprise; and that said group has consistently employed individuals and induced individuals to be associated with an enterprise and has knowingly or intentionally caused those individuals to participate in the activities of that enterprise.

23. That Fort Wayne Books, Inc. and A Group d/b/a European Investments N V, in addition to the aforesaid acts, has from the 8th day of June, 1981 up to and including the date of the filing of this complaint used the real estate commonly known as 227 Pearl Street, Fort Wayne, Allen County, Indiana, as a place to establish an "enterprise" in that it has associated in fact during said period with Cinema Blue of Fort Wayne, Inc. and Erotica House Bookstore, Inc. That on the 6th day of July, 1978, the application for admission of Cinema Blue of Fort Wayne, Inc., a foreign corporation, to do business in the State of Indiana was filed and approved, such application for admission showing that same is a Delaware corporation who listed its local address as 2441 Broadway, Fort Wayne, Indiana 46807, and which in Article XII designated its resident agent for the purposes of legal process as C T Corporation System, same being located at 1011 Merchants

Bank Building, Indianapolis, Indiana 46204. Further, its association in fact is demonstrated by the Certificate of Incorporation of Erotica House Bookstores, Inc., which was duly admitted on the 3rd day of March, 1980, and whose Articles of Incorporation show that the designated corporate agent for legal process for said corporation is C T Corporation System, 1011 Merchants Bank Building, Indianapolis, Indiana 46204, and that its principal office is 1011 Merchants Bank Building, Indianapolis, Indiana 46204.

24. That on or about the 15th day of March, 1984, the enterprise doing business as Fort Wayne Books, Inc. did employ one Mark A. Brooks, who was associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for said Fort Wayne Books, Inc. within his actual authority and in the normal course of business at said corporation's business address, 227 Pearl Street, Fort Wayne, Allen County, Indiana, said Mark A. Brooks did then and there violate Indiana Code 35-49-3-1 in that he unlawfully and knowingly exhibited to another person obscene matter on four occasions on said date. By way of example and not limitation, said Mark A. Brooks did sell "tokens" to Fort Wayne police officers for the express purpose of allowing said persons to operate certain "video machines" within said establishment. That Fort Wayne police officers did purchase said tokens and view four "motion or video pictures" on said date and that it was the belief of said officers that said motion pictures which they saw were obscene in that the average person, applying contemporary community standards, would find that the dominant theme of the matter

or performance in said films, taken as a whole, appeal to the prurient interest in sex; and that the matter or performance depicted in a patently offensive way sexual conduct; and that the matter in the films taken as a whole, lacked serious literary, artistic, political or scientific value.

25. That on or about the 16th day of March, 1984, the enterprise doing business as Fort Wayne Books, Inc. did employ personnel who were associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for said Fort Wayne Books, Inc. within their actual authority and in the normal course of business at said corporation's business address, 227 Pearl Street, Fort Wayne, Allen County, Indiana, said personnel did then and there violate Indiana Code 35-49-3-1 in that they unlawfully and knowingly exhibited to another person obscene matter on twelve occasions on said date. By way of example and not limitation, said personnel did sell "tokens" to Fort Wayne police officers for the express purpose of allowing said persons to operate certain "video machines" within said establishment. That Fort Wayne police officers did purchase said tokens and view twelve "motion or video pictures" on said date and that it was the belief of said officers that said motion pictures which they saw were obscene in that the average person, applying contemporary community standards, would find that the dominant theme of the matter or performance in said films, taken as a whole, appeal to the prurient interest in sex; and that the matter or performance depicted in a patently offensive way sexual conduct; and that the matter in the films taken as a whole, lacked serious literary, artistic, political or scientific value.

II.

That the defendant Cinema Blue of Fort Wayne, Inc. has since the 8th day of June, 1981, up to and including the date of the filing of this complaint:

a) offered to distribute, distributed, or exhibited to another person obscene matter; and

b) that said Cinema Blue of Fort Wayne, Inc. has during said period of time attempted to commit, or conspired to commit, or aided and abetted in a violation of Indiana Code 35-30-10.1-2 and Indiana Code 35-49-3-1 and 35-45-6-2; and

c) that Cinema Blue of Fort Wayne, Inc. has "associated in fact" with Fort Wayne Books, Inc., Erotica House Bookstore, Inc., Donald Krontz personally and as a manager and member of the board of directors of the aforesaid corporations, the other defendants named herein and individuals not known to your plaintiff in at least two incidents of racketeering activity that have had the same or similar intent, result, accomplice, victim, or method of commission and that as a result of such actions the defendant Cinema Blue of Fort Wayne, Inc. has received proceeds directly or indirectly from a pattern of racketeering activity; and

d) that said corporation has used or invested those proceeds to acquire an interest in real property or to establish or to operate the enterprise; and

e) that through said pattern of activity said corporation has knowingly or intentionally acquired or maintained, either directly or indirectly, an interest in or control of real property or an enterprise; and

f) that said corporation has employed Donald Krontz and others not known to your plaintiff who have been employed and associated with the enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise through a pattern of "racketeering activity".

In support thereof your plaintiff further alleges as follows:

1. That Cinema Blue of Fort Wayne, Inc. is a Delaware corporation which received its "Certificate of Admission" to operate in the State of Indiana on the 6th day of July, 1978, and which has continued its operation in the State of Indiana up to and including the date of the filing of this complaint.

2. That the "Certificate of Admission" for said corporation establishes the name and address of the corporate resident agent for service of process as C T Corporation System and listed its address as 1011 Merchants Bank Building, Indianapolis, Indiana 46204. Further, that said "Certificate of Admission" cites the legal address of said corporation in the State of Indiana as 1011 Merchants Bank Building, Indianapolis, Indiana 46204.

3. That said Cinema Blue of Fort Wayne, Inc. has from 1981 up to and including the date of the filing of this complaint operated its principal activities and acts at 2441 Broadway, in the City of Fort Wayne, County of Allen, State of Indiana.

4. That on July 1, 1983 and, to the best of your petitioner's knowledge, up to the date of the filing of this complaint Donald Krontz was employed by Cinema Blue of Fort Wayne, Inc. as the manager of said corporation and was simultaneously employed by Fort Wayne Books, Inc. as the manager of that corporation and was employed by Erotica House Bookstore, Inc. as the manager of that corporation. That simultaneously Mr. Donald Krontz is and has been a member of the board of directors of all three of said corporations.

5. That on the 4th day of February, 1982, Suzanne Krontz did knowingly distribute obscene matter for consideration in violation of Indiana Code 35-30-10.1-2 to a Fort Wayne police officer. That said Suzanne Krontz was convicted by the Allen Superior Court in Cause No. CRM-82-2769 of said violation. That at the time of said offense said Suzanne Krontz was an agent of the corporation acting within her actual authority in the normal course of business at 2441 Broadway in the City of Fort Wayne, County of Allen, State of Indiana, for and on behalf of Cinema Blue of Fort Wayne, Inc.

6. That on or about the 16th day of February, 1982 Cinema Blue of Fort Wayne, Inc. operated a store in Allen County, Indiana, at 2441 Broadway, Fort Wayne, Indiana, and that said corporation did on the 16th day of February, 1982 violate Indiana Code 35-30-10.1-2 in that its human agent, Suzanne Krontz, did sell obscene materials to a Fort Wayne police officer and that said corporation was convicted in the Allen Superior Court of said offense in Cause No. CRM-82-2770, same being a violation of Indiana Code 35-30-10.1-2, Sale of Obscene Matter.

7. That on the 10th day of June, 1982 Lloyd C. Ashley did knowingly distribute obscene matter for consideration in violation of Indiana Code 35-30-10.1-2 to a Fort Wayne police officer. That said Lloyd C. Ashley was convicted by the Allen Superior Court in Cause No. CRM-82-14251 of said violation. That at the time of said offense said Lloyd C. Ashley was an agent of the corporation acting within his actual authority in the normal course of business at 2441 Broadway, Fort Wayne, Allen County,

Indiana, for and on behalf of Cinema Blue of Fort Wayne, Inc.

8. That on or about the 1st day of July, 1982 Cinema Blue of Fort Wayne, Inc. operated a store in Allen County, Indiana, at 2441 Broadway, Fort Wayne, Indiana, and that said corporation did on the 1st day of July, 1982 violate Indiana Code 35-30-10.1-2 in that its human agent, Lloyd C. Ashley, did sell obscene materials to a Fort Wayne police officer and that said corporation was convicted in the Allen Superior Court of said offense in Cause No. CRM-82-16917, same being a violation of Indiana Code 35-30-10.1-2, Sale of Obscene Matter.

9. That on the 8th day of July, 1982, Ronald E. Richards, Jr. did knowingly distribute obscene matter for consideration in violation of Indiana Code 35-30-10.1-2 to a Fort Wayne police officer. That said Ronald E. Richard, Jr. was convicted by the Allen Superior Court in Cause No. CRM-82-14258 of said violation. That at the time of said offense said Ronald E. Richards, Jr. was an agent of the corporation acting within his actual authority in the normal course of business at 2441 Broadway in the City of Fort Wayne, County of Allen, State of Indiana, for and on behalf of Cinema Blue of Fort Wayne, Inc.

10. That on or about the 14th day of September, 1982, Cinema Blue of Fort Wayne, Inc. operated a store in Allen County, Indiana, at 2441 Broadway, Fort Wayne, Indiana, and that said corporation did on the 14th day of September 1982 violate Indiana Code 35-30-10.1-2 in that its human agent, Nancy L. Johnson a/k/a Nancy Schwass Johnson, did sell obscene materials to a Fort Wayne police officer and that said corporation was convicted in the Allen Superior Court of said offense in Cause No. CRM-82-16923, same being a violation of Indiana Code 35-30-10.1-2, Sales of Obscene Matter.

11. That on or about the 1st day of December, 1982, Cinema Blue of Fort Wayne, Inc. operated a store in Allen County, Indiana, at 2441 Broadway, Fort Wayne, Indiana, and that said corporation did on the 1st day of December, 1982 violate Indiana Code 35-30-10.1-2 in that its human agent, Mary Kathleen Krontz, did sell obscene materials to a Fort Wayne police officer and that said corporation was convicted in the Allen Superior Court of said offense in Cause No. CRM-82-22451, same being a violation of Indiana Code 35-30-10.1-2, Sale of Obscene Matter.

12. That on or about the 21st day of November, 1983, Cinema Blue of Fort Wayne, Inc. did employ one Ronald E. Richards, Jr., who was associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for said Cinema Blue of Fort Wayne, Inc. within his actual authority and in the normal course of business at said corporation's business address, 2441 Broadway, Fort Wayne, Allen County, Indiana, on or about the 21st day of November, 1983, at the County of Allen, State of Indiana, said Ronald E. Richards, Jr. did then and there violate Indiana Code 35-49-3-1 in that he unlawfully and knowingly distributed obscene matter for consideration, to-wit: by selling a certain obscene publication, to-wit: a magazine entitled "Bitch In Heat". That said Ronald E. Richards, Jr. was convicted in the Allen Superior Court of Count I of Cause No. CR 83-511. That Ronald E. Richards, Jr. was not only an employee

of Cinema Blue of Fort Wayne, Inc. but that he was also an employee of Erotica House Bookstore, Inc., 930 Broadway, in that on December 7, 1983, said Ronald E. Richards, Jr., who was associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for Cinema Blue of Fort Wayne, Inc. and Erotica House Bookstore, Inc. at Erotica House Bookstore, Inc. business address 930 Broadway, Fort Wayne, Allen County, Indiana, on or about the 7th day of December, 1983, at the County of Allen, State of Indiana, said Ronald E. Richards, Jr. did then and there violate Indiana Code 35-49-3-1 in that he unlawfully and knowingly distributed obscene matter for consideration to-wit: by selling a certain obscene publication, to-wit: a magazine entitled "Wet Fantasies". That said Ronald E. Richards, Jr. was convicted in Count II of Cause No. CR-83-511 in the Allen Superior Court.

13. That on or about the 22nd day of November, 1983 and the 30th day of November, 1983, Cinema Blue of Fort Wayne, Inc. did employ one Mary Kathleen Krontz, who was associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for said Cinema Blue of Fort Wayne, Inc. within her actual authority and in the normal course of business at said corporation's business address, 2441 Broadway, Fort Wayne, Allen County, Indiana, on or about the 22nd and 30th days of November, 1983, respectively, at the County of Allen, State of Indiana, said Mary Kathleen Krontz did then and there violate Indiana Code 35-49-3-1 in that she unlawfully and knowingly distributed obscene matter

for consideration, to-wit: by selling respectively a certain obscene publication, to-wit: a magazine entitled "Leather Bound" and a magazine entitled "Nazi Lust". That Mary Kathleen Krontz was convicted in Allen Superior Court of said offenses in Counts I and II of Cause No. CR-83-512.

14. That Cinema Blue of Fort Wayne, Inc. and A Group d/b/a/ Theatre A Corporation, in addition to the aforesaid acts, has from the 8th day of June, 1981 up to and including the date of the filing of this complaint used the real estate commonly known as 2441 Broadway, Fort Wayne, Allen County, Indiana, as a place to offer to distribute, distribute, and exhibit to other persons obscene matter of a similar nature as set forth in this complaint.

15. That Cinema Blue of Fort Wayne, Inc. and A Group d/b/a Theatre A Corporation, in addition to the aforestated acts, has from the 8th day of June, 1981 up to and including the date of the filing of this complaint used the real estate commonly known as 2441 Broadway, Fort Wayne, Allen County, Indiana:

a) as a place to gather for distribution, display, and offer to other persons for consideration similar obscene matter and have continued to commit, or to attempt to commit, or to conspire to commit, or to aid and abet in violation of Indiana Code 35-45-6-2 and 35-30-10.1-2 and Indiana Code 35-49-3-1;

b) that the Group d/b/a Theatre A Corporation, 819 Southeast Second Street, Evansville, Indiana 47713, holds legal title to said real estate and that said group as a result of this continued activity has profited from the receipt of proceeds, directly or indirectly, derived from a pattern of racketeering activity and that said group has used the proceeds derived from such activities to acquire an interest in real property or to establish or to operate an enterprise;

c) that said group has knowingly or intentionally acquired or maintained, either directly or indirectly, an interest in or control of the real estate commonly known as 2441 Broadway, Fort Wayne, Allen County, Indiana, and all of the contents therein, or an enterprise; and

d) that said group has consistently employed individuals and induced individuals to be associated with an enterprise and has knowingly or intentionally caused those individuals to participate in the activities of that enterprise.

16. That Cinema Blue of Fort Wayne, Inc., in addition to the aforestated acts, has from the 8th day of June, 1981 up to and including the date of the filing of this complaint used the real estate commonly known as 2441 Broadway, Fort Wayne, Allen County, Indiana, as a place to establish an "enterprise" in that it has associated in fact during said period with Fort Wayne Books, Inc. and Erotica House Bookstore, Inc. That Fort Wayne Books, Inc. is an Indiana corporation which began its corporate existence on the 4th day of April 1979, whose Articles of Incorporation show C T Corporation System as its agent for lawful process, same being located at 1011 Merchants Bank Building, Indianapolis, Indiana 46204. Further, it is associated in fact with Erotica House Bookstore, Inc. whose Certificate of Incorporation with the State of Indiana shows that same was duly admitted on the 3rd day of March, 1980, and whose Articles of Incorporation show that the designated corporate agent for legal process for said corporation is C T Corporation System, 1011 Merchants Bank Building, Indiannapolis, Indiana 46204, and that its principal office is 1011 Merchants Bank Building, Indianapolis, Indiana 46204.

17. That on or about the 15th day of March, 1984, the enterprise doing business as Cinema Blue of Fort Wayne, Inc. did employ personnel who were associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for said Cinema Blue of Fort Wayne, Inc. within their actual authority and in the normal course of business at said corporation's business address, 2441 Broadway, Fort Wayne, Allen County, Indiana, said personnel did then and there violate Indiana Code 35-49-3-1 in that they unlawfully and knowingly exhibited to another person obscene matter on six occasions on said date. By way of example and not limitation, said personnel did sell "tokens" to Fort Wayne police officers for the express purpose of allowing said persons to operate certain "video machines" within said establishment. That Fort Wayne police officers did purchase said tokens and view six "motion or video pictures" on said date and that it was the belief of said officers that said motion pictures which they saw were obscene in that the average person, applying contemporary community standards, would find that the dominant theme of the matter or performance in said films, taken as a whole, appeal to the prurient interest in sex; and that the matter or performance depicted in a patently offensive way sexual conduct; and that the matter in the films taken as a whole, lacked serious literary, artistic, political or scientific value.

18. That on or about the 16th day of March, 1984, the enterprise doing business as Cinema Blue of Fort Wayne, Inc. did employ personnel who were associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of

that enterprise in that while acting as an agent for said Cinema Blue of Fort Wayne, Inc. within their actual authority and in the normal course of business at said corporation's business address, 2441 Broadway, Fort Wayne, Allen County, Indiana, said personnel did then and there violate Indiana Code 35-49-3-1 in that they unlawfully and knowingly exhibited to another person obscene matter on two occasions on said date. By way of example and not limitation, said personnel did sell "tokens" to Fort Wayne police officers for the express purpose of allowing said persons to operate certain "video machines" within said establishment. That Fort Wayne police officers did purchase said tokens and view two "motion or video pictures" on said date and that it was the belief of said officers that said motion pictures which they saw were obscene in that the average person, applying contemporary community standards, would find that the dominant theme of the matter or performance in said films, taken as a whole, appeal to the prurient interest in sex; and that the matter or performance depicted in a patently offensive way sexual conduct; and that the matter in the films taken as a whole, lacked serious literary, artistic, political or scientific value.

III.

That the defendant Erotica House Bookstore, Inc. has since the 8th day of June, 1981, up to and including the date of the filing of this complaint:

a) offered to distribute, distributed, or exhibited to another person obscene matter; and

b) that said Erotica House Bookstore, Inc. has during said period of time attempted to commit or conspired to commit, or aided and abetted in a violation of Indiana Codes 35-30-10.1-2, 35-49-3-1, and 35-45-6-2; and

c) that Erotica House Bookstore, Inc. has "associated in fact" with Cinema Blue of Fort Wayne, Inc., Fort Wayne Books, Inc., Donald Grontz personally and as a manager and member of the board of directors of the aforesaid corporations, the other defendants named herein and individuals not known to your plaintiff, in at least two incidents of racketeering activity that have had the same or similar intent, result, accomplice, victim, or method of commission and that as a result of such actions the defendant Erotica House Bookstore, Inc. has received proceeds directly or indirectly derived from a pattern of racketeering activity; and

d) that said corporation has used or invested those proceeds to acquire an interest in real property or to establish or to operate the enterprise; and

e) that through said pattern of activity said corporation has knowingly or intentionally acquired or maintained, either directly or indirectly, an interest or control of real property or an enterprise; and

f) that said corporation has employed Donald Krontz and others not known to your plaintiff who have been employed and associated with the enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise through a pattern of "racketeering activity".

In support thereof your plaintiff further alleges as follows:

1. That Erotica House Bookstore, Inc. is an Indiana corporation which began its corporate existence on the 3rd day of March, 1980, and which has continued in existence up to and including the date of the filing of this complaint.

2. That the Certificate of Incorporation of Erotica House Bookstore, Inc. establishes the name and address of the corporate resident agent for service of process as C T Corporation System and lists its address as 1011 Merchants Bank Building, Indianapolis, Indiana 46204, and that said Articles of Incorporation indicate that the principal office of said corporation and the post office address of the corporation is 1011 Merchants Bank Building, Indianapolis, Indiana 46204.

3. That Erotica House Bookstore, Inc. has from 1981 up to and including the date of the filing of this complaint operated its principal activities and acts at 930 Broadway, Fort Wayne, Allen County, Indiana.

4. That on July 1, 1983 and, to the best of your petitioner's knowledge, up to the date of the filing of this complaint Donald Krontz was employed by Erotica House Bookstore, Inc. as the manager of said corporation and was simultaneously employed by Cinema Blue of Fort Wayne, Inc. as the manager of that corporation and was employed by Fort Wayne Books, Inc. as the manager of that corporation. That simultaneously Mr. Krontz is and has been a member of the board of directors of all three of said corporations.

5. That on or about the 15th day of June, 1981, Erotica House Bookstore, Inc. operated a store in Allen County, Indiana at 930 Broadway, and that said corporation did on the 15th day of June, 1981 violate Indiana Code 35-30-10.1-2 in that its human agent, Lee Bickel, did sell obscene materials to a Fort Wayne police officer and that said corporation was convicted in the Allen Superior Court of said offense in Cause No. CRM-81-9439, same being a violation of Indiana Code 35-30-10.1-2, Sale of Obscene Matter.

6. That on or about the 2nd day of February, 1982, Erotica House Bookstore, Inc. operated a store in Allen County, Indiana at 930 Boardway and that said corporation did on the 2nd day of February, 1982 violate Indiana Code 35-30-10.1-2 in that its human agent, Lee Bickel, did sell obscene materials to a Fort Wayne police officer and that said corporation was convicted in the Allen Superior Court of said offense in Cause No. CRM-82-2767, same being a violation of Indiana Code 35-30-10.1-2, Sale of Obscene Matter.

7. That on or about the 10th day of February, 1982, Erotica House Bookstore, Inc. operated a store in Allen County, Indiana at 930 Broadway and that said corporation did on the 10th day of February, 1982 violate Indiana Code 35-30-10.1-2 in that its human agent, Lee Joseph Bickel a/k/a Lee Bickel, did sell obscene materials to a Fort Wayne police officer and that said corporation was convicted in the Allen Superior Court of said offense in Cause No. CRM-82-2768, same being a violation of Indiana Code 35-30-10.1-2, Sale of Obscene Matter.

8. That on or about the 7th day of June, 1982, Erotica House Bookstore, Inc. operated a store in Allen County, Indiana at 930 Broadway, and that said corporation did on the 7th day of June, 1982 violate Indiana Code 35-30-10.1-2 in that its human agent, Anthony L. Leedy, did sell obscene materials to a Fort Wayne police officer and that said corporation was convicted in the Allen Superior Court of said offense in Cause No. CRM-82-14257, same being a violation of Indiana Code 35-30-10.1-2, Sale of Obscene Matter.

9. That on or about the 7th day of July, 1982, Erotica House Bookstore, Inc. operated a store in Allen County, Indiana at 930 Broadway, and that said corporation did on the 7th day of July, 1982 violate Indiana Code 35-30-10.1-2 in that its human agent, Lee J. Bickel, did sell obscene materials to a Fort Wayne police officer and that said corporation was convicted in the Allen Superior Court of said offense in Cause No. CRM-82-14252, same being a violation of Indiana Code 35-30-10.1-2, Sale of Obscene Matter.

10. That on or about the 2nd day of August, 1982, Erotica House Bookstore, Inc. operated a store in Allen County, Indiana at 930 Broadway, and that said corporation did on the 2nd day of August, 1982 violate Indiana Code 35-30-10.1-2 in that its human agent, Nancy Schwass a/k/a Nancy L. Johnson, did sell obscene materials to a Fort Wayne police officer and that said corporation was convicted in the Allen Superior Court of said offense in Cause No. CRM-82-14256, same being a violation of Indiana Code 35-30-10.1-2, Sale of Obscene Matter.

11. That on or about the 4th day of August, 1982, Erotica House Bookstore, Inc. operated a store in Allen County, Indiana at 930 Broadway, and that said corporation did on the 4th day of August, 1982 violate Indiana Code 35-30-10.1-2 in that its human agent, Lee J. Bickel, did sell obscene materials to a Fort Wayne police officer and that said corporation was convicted in the Allen Superior Court of said offense in Cause No. CRM-82-16919, same being a violation of Indiana Code 35-30-10.1-2, Sale of Obscene Matter.

12. That on or about the 10th day of August, 1982, Erotica House Bookstore, Inc. operated a store in Allen

County, Indiana at 930 Broadway, and that said corporation did on the 10th day of August, 1982 violate Indiana Code 35-30-10.1-2 in that its human agent, Lee Joseph Bickel, did sell obscene materials to a Fort Wayne police officer and that said corporation was convicted in the Allen Superior Court of said offense in Cause No. CRM-82-16918, same being a violation of Indiana Code 35-30-10.1-2, Sale of Obscene Matter.

13. That on or about the 18th day of August, 1982, Erotica House Bookstore, Inc. operated a store in Allen County, Indiana at 930 Broadway, and that said corporation did on the 18th day of August, 1982 violate Indiana Code 35-30-10.1-2 in that its human agent, Nancy Schwass Johnson a/k/a Nancy L. Johnson, did sell obscene materials to a Fort Wayne police officer and that said corporation was convicted in the Allen Superior Court of said offense in Cause No. CRM-82-16924, same being a violation of Indiana Code 35-30-10.1-2, Sale of Obscene Matter.

14. That on or about the 25th day of August, 1982, Erotica House Bookstore, Inc. operated a store in Allen County, Indiana at 930 Broadway, and that said corporation did on the 25th day of August, 1982 violate Indiana Code 35-30-10.1-2 in that its human agent, James P. Harp, did sell obscene materials to a Fort Wayne police officer and that said corporation was convicted in the Allen Superior Court of said offense in Cause No. CRM-82-16922, same being a violation of Indiana Code 35-30-10.1-2, Sale of Obscene Matter.

15. That on September 14, 1982 James D. Fry did knowingly distribute obscene matter for consideration in

violation of Indiana Code 35-30-10.1-2 to a Fort Wayne police officer. That said James D. Fry was convicted by the Allen Superior Court in Cause No. CRM-82-16920 of said violation. That at the time of said offense said James D. Fry was an agent of the corporation acting within his actual authority in the normal course of business at 930 Broadway, Fort Wayne, Indiana, for and on behalf of Erotica House Bookstore, Inc.

16. That on September 14, 1982 James D. Fry did knowingly distribute obscene matter for consideration in violation of Indiana Code 35-30-10.1-2 to a Fort Wayne police officer. That said James D. Fry was convicted by the Allen Superior Court in Cause No. CRM-82-16921 of said violation. That at the time of said offense James D. Fry was an agent of the corporation acting within his actual authority in the normal course of business at 930 Broadway, Fort Wayne, Indiana, for and on behalf of Erotica House Bookstore, Inc.

17. That on September 28, 1982 James D. Fry did knowingly distribute obscene matter for consideration in violation of Indiana Code 35-30-10.1-2 to a Fort Wayne police officer. That said James D. Fry was convicted by the Allen Superior Court in Cause No. CRM-82-22383 of said violation. That at the time of said offense James D. Fry was an agent of the corporation acting within his actual authority in the normal course of business at 930 Broadway, Fort Wayne, Indiana, for and on behalf of Erotica House Bookstore, Inc.

18. That on or about the 29th day of September, 1982, Erotica House Bookstore, Inc. operated a store in Allen County, Indiana at 930 Broadway, and that said corporation did on the 29th day of September, 1982 violate Indiana

Code 35-30-10.1-2 in that its human agent, James P. Harp, did sell obscene materials to a Fort Wayne police officer and that said corporation was convicted in the Allen Superior Court of said offense in Cause No. CRM-82-222, same being a violation of Indiana Code 35-30-10.1-2, Sale of Obscene Matter.

19. That on or about the 9th day of May, 1983, Erotica House Bookstore, Inc. did employ one Deal L. Maggart, who was associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for said Erotica House Bookstore, Inc. within his actual authority and in the normal course of business at said corporation's business address, 930 Broadway, Fort Wayne, Allen County, Indiana, did on the 9th day of May, 1983, in the County of Allen and in the State of Indiana, then and there unlawfully and knowingly distribute obscene matter for consideration in violation of Indiana Code 35-30-10.1-2, to-wit: that Dean L. Maggart did then and there unlawfully and knowingly distribute obscene matter for consideration, to-wit: by selling a certain obscene publication, to-wit: a magazine entitled "Bitch In Control". That said Dean L. Maggart was convicted in Allen Superior Court of said offense in Count I of Cause CR-83-385.

20. That on or about the 11th day of May, 1983, Erotica House Bookstore, Inc. did employ one Dean L. Maggart, who was associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for said Erotica House Bookstore, Inc.

within his actual authority and in the normal course of business at said corporation's business address, 930 Broadway, Fort Wayne, Allen County, Indiana, did on the 11th day of May, 1983, in the County of Allen and in the State of Indiana then and there unlawfully and knowingly distribute obscene matter for consideration in violation of Indiana Code 35-30-10.1-2, to-wit: that Dean L. Maggart did then and there unlawfully and knowingly distribute obscene matter for consideration, to-wit: by selling a certain obscene publication, to-wit: a magazine entitled "Rubber Bondage". That said Dean L. Maggart was convicted of said offense in the Allen Superior Court in Count II of Cause CR-83-385.

21. That on or about the 3rd day of June, 1983, Erotica House Bookstore, Inc. did employ one Dean L. Maggart, who was associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for said Erotica House Bookstore, Inc. within his actual authority and in the normal course of business at said corporation's business address, 930 Broadway, Fort Wayne, Allen County, Indiana, did on the 3rd day of June, 1983, in the County of Allen and in the State of Indiana, then and there unlawfully and knowingly distribute obscene matter for consideration in violation of Indiana Code 35-30-10.1-2, to-wit: That Dean L. Maggart did then and there unlawfully and knowingly distribute obscene matter for consideration, to-wit: by selling a certain obscene publication, to-wit: a magazine entitled "Demanding". That said Dean L. Maggart was convicted of said offense in the Allen Superior Court in Count III of Cause CR-83-385.

22. That on or about the 9th day of May, 1983, Erotica House Bookstore, Inc. did employ one Robby D. Woods, who was associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for said Erotica House Bookstore, Inc. within his actual authority and in the normal course of business at said corporation's business address, 930 Broadway, Fort Wayne, Allen County, Indiana, did on the 9th day of May, 1983, in the County of Allen and in the State of Indiana, then and there unlawfully and knowingly distribute obscene matter for consideration in violation of Indiana Code 35-30-10.1-2, to-wit: that Robby D. Woods did then and there unlawfully and knowingly distribute obscene matter for consideration, to-wit: by selling a certain obscene publication, to-wit: a magazine entitled "Bizarre Fantasies". That said Robby D. Woods was convicted of said offense in the Allen Superior Court in Count I of Cause CR-83-383.

23. That on or about the 11th day of May, 1983, Erotica House Bookstore, Inc. did employ one Robby D. Woods, who was associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for said Erotica House Bookstore, Inc. within his actual authority and in the normal course of business at said corporation's business address, 930 Broadway, Fort Wayne, Allen County, Indiana, did on the 11th day of May, 1983, in the County of Allen and in the State of Indiana, then and there unlawfully and knowingly distribute obscene matter for consideration in violation of Indiana Code 35-30-10.1-2, to-wit: that Robby D. Woods did then and there unlawfully and knowingly distribute obscene

matter for consideration, to-wit: by selling a certain obscene publication, to-wit: a magazine entitled "Kinky World". That said Robby D. Woods was convicted of said offense in the Allen Superior Court in Count II of Cause No. CR-83-383.

24. That on or about the 7th day of June, 1983, Erotica House Bookstore, Inc. did employ one Robby D. Woods, who was associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for said Erotica House Bookstore, Inc. within his actual authority and in the normal course of business at said corporation's business address, 930 Broadway, Fort Wayne, Allen County, Indiana, did on the 7th day of June, 1983, in the County of Allen and in the State of Indiana, then and there unlawfully and knowingly distribute obscene matter for consideration in violation of Indiana Code 35-30-10.1-2, to-wit: that Robby D. Woods did then and there unlawfully and knowingly distribute obscene matter for consideration, to-wit: by selling a certain obscene publication, to-wit: a magazine entitled "Bizarre Contacts". That said Robby D. Woods was convicted of said offense in the Allen Superior Court in Count III of Cause CR-83-383.

25. That on or about the 15th day of March, 1984, Erotica House Bookstore, Inc. did employ one white female approximately 5′ 6″ tall approximately 130#, in her twenties, whose name is believed to be _____, who was associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as

an agent for said Erotica House Bookstore, Inc. within her actual authority and in the normal course of business at said corporation's business address, 930 Broadway, Fort Wayne, Allen County, Indiana, on or about the 15th day of March, 1984, at the County of Allen, State of Indiana, said employee did then and there violate Indiana Code 35-49-3-1 in that she unlawfully and knowingly distributed obscene matter for consideration, to-wit: by selling two obscene publications, to-wit: a magazine entitled "Cock-Biter" and a magazine entitled "Ass Attack". Said magazines showing male and female human beings engaged in sadomasochistic abuse and sexual activity, without any restrictions which the average person applying contemporary community standards must find that the dominant theme of said alleged matters, taken as a whole, appeal to the prurient interest in sex; and said matter depicts in a patently offensive way sexual conduct; the matter taken as a whole lacks serious literary, artistic, political or scientific value, knowing the above to be true, all of which is contrary to the form of the statute in such cases made and provided. That said material was sold to an officer of the Fort Wayne Police Department.

26. That on or about the 15th day of March, 1984, Erotica House Bookstore, Inc. did employ one Nancy S. Johnson, who was associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for said Erotica House Bookstore, Inc. within her actual authority and in the normal course of business at said corporation's business address, 930 Broadway, Fort Wayne, Allen County, Indiana, on or

about the 15th day of March, 1984, at the County of Allen, State of Indiana, said Nancy S. Johnson did then and there violate Indiana Code 35-49-3-1 in that she unlawfully and knowingly distributed obscene matter for consideration, to-wit: by selling a certain obscene publication, to-wit: a magazine entitled "Dick, Tit, Ass Fucker", the front cover of the same showing a female white and male whites engaged in sexual activity, and on the back cover a female white and male whites engaged in sexual activity, without any restrictions, which the average person applying contemporary community standards must find that the dominant theme of said magazine, taken as a whole, appeal to the prurient interest in sex; and said matter depicts in a patently offensive way sexual conduct; the matter taken as a whole lacks serious literary, artistic, political or scientific value, knowing the above to be true all of which is contrary to the form of the statute in such cases made and provided. That said material was sold to a police officer with the Fort Wayne Police Department.

27. That on or about the 16th day of March, 1984, Erotica House Bookstore, Inc. did employ one female white approximately 5' 6" tall, approximately 130# in her twenties, whose name is unknown but believed to be .....,
who was associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for said Erotica House Bookstore, Inc. within her actual authority and in the normal course of business at said corporation's business address, 930 Broadway, Fort Wayne, Allen County, Indiana, on or about the 16th day of March, 1984, at the County of Allen, State of

Indiana, said employee did then and there violate Indiana Code 35-49-3-1 in that she unlawfully and knowingly distributed obscene matter for consideration, to-wit: by selling two obscene publications, to-wit: a magazine entitled "Anal Thrust", the front cover of same showing a male white and a female white engaged in sexual activity and the back cover showing a male white and a female white engaged in sexual activity; and, a magazine entitled "Anal Virgin", the front cover showing sexual activity and carries the words "She learned the hard way" and the back cover showing a male white and female white engaged in sexual activity; said magazines showing sexual activity without any restrictions which the average person applying contemporary community standards must find that the dominant theme of said alleged matters, taken as a whole, appeal to the prurient interest in sex; and said matter depicts in a patently offensive way sexual conduct; the matter taken as a whole lacks serious literary, artistic, political or scientific value, knowing the above to be true, all of which is contrary to the form of the statute in such cases made and provided. Said material was sold to a police officer with the Fort Wayne Police Department.

28. That on or about the 16th day of March, 1984, the enterprise doing business as Erotica House Bookstore, Inc. did employ personnel who were associated with said enterprise and who knowingly or intentionally conducted or otherwise participated in the activities of that enterprise in that while acting as an agent for said Erotica House Bookstore, Inc. within their actual authority and in the normal course of business at said corporation's business address, 930 Broadway, Fort Wayne, Allen County, Indiana, said personnel did then and there vio-

late Indiana Code 35-49-3-1 in that they unlawfully and knowingly exhibited to another person obscene matter on three occasions on said date. By way of example and not limitation, said personnel did allow the use of tokens by police officers for the express purpose of allowing said persons to operate certain "video machines" within said establishment. That Fort Wayne police officers did purchase said tokens from Cinema Blue and view three "motion or video pictures" at Erotica House on said date and that it was the belief of said officers that said motion pictures which they saw were obscene in that the average person, applying contemporary community standards, would find that the dominant theme of the matter or performance in said films, taken as a whole, appeal to the prurient interest in sex; and that the matter or performance depicted in a patently offensive way sexual conduct; and that the matter in the films taken as a whole lack serious literary, artistic, political or scientific value.

29. That Erotica House Bookstore, Inc. and Mr. Cyrus B. Cooper, in addition to the aforesaid acts, have from the 8th day of June, 1981, up to and including the date of the filing of this complaint, used or allowed to be used the real estate commonly known as 930 Broadway, Fort Wayne, Allen County, Indiana, as a place to offer to distribute, distribute, and exhibit to other persons obscene matter of a similar nature as set forth in this complaint.

30. That Erotica House Bookstore, Inc. and Mr. Cyrus B. Cooper, in addition to the aforesaid acts, have from the 8th day of June, 1981, up to and including the date of the filing of this complaint:

a) used or allowed the use of the real estate commonly known as 930 Broadway, Fort Wayne, Allen County, Indiana, as a place to gather for distribution, display, and offer to others for consideration simi'ar obscene matter and have continued to commit, or to at'empt to commit, or to conspire to commit, or to aid and abet in violation of Indiana Code 35-45-6-2 and Indiana Code 35-30-10.1-2 or Indiana Code 35-49-3-1; and

b) that title to said property is vested in Mr. Cyrus B. Cooper who has from the continued activity of the enterprise received proceeds, directly or indirectly, derived from a pattern of racketeering activity and that said corporation and Mr. Cyrus B. Cooper have used the proceeds derived from such activities to acquire an interest in real property or to establish or to operate an enterprise; and

c) that said corporation and/or Mr. Cyrus B. Cooper have knowingly or intentionally acquired or maintained, either directly or indirectly, an interest in or control of the real estate commonly known as 930 Broadway, Fort Wayne, Allen County, Indiana, and all of the contents therein, or an enterprise; and

d) that said corporation and/or Mr. Cyrus B. Cooper have consistently employed individuals and induced individuals to be associated with an enterprise and have knowingly or intentionally caused those individuals to participate in the activities of that enterprise.

31. That Erotica House Bookstore, Inc. in addition to the aforesaid acts, has from the 8th day of June, 1981, up to and including the date of the filing this complaint, used the real estate commonly known as 930 Broadway, Fort Wayne, Allen County, Indiana, as a place to establish an "enterprise" in that it has associated in fact during said period with Fort Wayne Books, Inc. and Cinema Blue of Fort Wayne, Inc. That on the 6th day of July, 1978, the

application for admission of Cinema Blue of Fort Wayne, Inc., a foreign corporation, to do business in the State of Indiana was filed and approved, such application for admission showing that same is a Delaware corporation who lists its local address as 2441 Broadway, Fort Wayne, Indiana 46807, and which in Article XII designated its resident agent for the purposes of legal process as C T Corporation System, same being located at 1011 Merchants Bank Building, Indianapolis, Indiana 46204. Further, its association in fact is demonstrated by the Certificate of Incorporation of Fort Wayne Books, Inc., which was duly admitted as an Indiana corporation on the 4th day of April, 1979, and whose Articles of Incorporation show that the designated corporate agent for legal process for said corporation is C T Corporation System, 1011 Merchants Bank Building, Indianapolis, Indiana 46204, and that its principal office is 1011 Merchants Bank Building, Indianapolis, Indiana 46204.

WHEREFORE, plaintiff prays the Court for judgment against the defendants, and each of them, as follows:

1. That the Court order the suspension or revocation of any license, permit, or prior approval granted to any of the defendants by any agency of the State;

2. That the Court order the forfeiture of the Charter of each of the defendants which are corporations organized under the laws of the State of Indiana and the revocation of the Certificate authorizing a foreign corporation to conduct business within the state of each of the defendants which are a foreign corporation so as to prevent future criminal activity and to protect the public interests;

3. To find that the defendants have as a "group" conducted an enterprise which has violated Indiana Code 35-45-6-2 and that it is in the public interest to prevent criminal activity that a permanent injunction be ordered against all of the defendants directing them to refrain from further violations of Indiana Code 35-45-6-2;

4. That the Court, in order to make effective its permanent injunction, order the dissolution of the enterprise and impose reasonable restrictions upon the future activities of investments of each and every defendant, including reasonable provisions prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which said defendant was engaged in violation of Indiana Code 35-45-6-2;

5. That the Court order each and every defendant to divest itself of any interest in the enterprise, including all personal and real property;

6. That the Court order the defendants to immediately list and state the location of all property, real or personal, tangible or intangible, including money and bank accounts, of any type, that the defendants own, or have title to, or any right, interest or equity in;

7. That pursuant to Indiana Code 34-4-30.5-3 (a) the Court order the forfeiture of all property, real or personal, tangible or intangible where said property was used in the course of, intended for use in the course of, derived from, or realized through, conduct in violation of Indiana Code 35-45-6-2:

a) by way of example and not limitation, the State specifically asks for the forfeiture of that certain real estate commonly known as 227 Pearl Street, Fort

Wayne, Allen County, Indiana, together with all of its contents whether same be real or personal;

b) by way of example and not limitation, the State specifically asks for the forfeiture of that certain real estate commonly known at 930 Broadway, Fort Wayne, Allen County, Indiana, together with all of its contents whether same be real or personal;

c) by way of example and not limitation, the State specifically asks for the forfeiture of that certain real estate commonly known as 2441 Broadway, Fort Wayne, Allen County, Indiana, together with all of its contents whether same be real or personal;

8. That the Court order the forfeiture of all bank accounts of Fort Wayne Books, Inc., Cinema Blue of Fort Wayne, Inc., and Erotica House Bookstore, Inc.;

9. That the Court subject all personal and real properties, money, intangibles, and corporate interests and activities acquired or maintained in violation of Indiana Code 35-45-6-2 to Court supervision and order the defendants to refrain from disposing of, transferring, relocating, dissipating, or otherwise altering the status of said property, whether real or personal, tangible or intangible, or corporate entities, without prior approval of the Court;

10. Plaintiff prays the Court for an order sequestering and subjecting to Court supervision all bank accounts held by the individual and corporate defendants herein, and that upon a finding for plaintiff, the Court supervise the sale, transfer, or the disposition of all real and personal property, whether tangible or intangible, of said de-

fendant found subject to the act, and for all other relief deemed just and proper in the premises.

Respectfully submitted,

/s/ Stephen M. Sims
Stephen M. Sims
Prosecuting Attorney
38th Judicial Court
State of Indiana

(Certificate of Service omitted in printing.)

IN THE ALLEN CIRCUIT COURT

CAUSE NO. CC84-446

STATE OF INDIANA)
) ss:
COUNTY OF ALLEN)

STATE OF INDIANA AND STEPHEN M. SIMS, PROSECUTING ATTORNEY FOR THIRTY-EIGHTH JUDICIAL CIRCUIT,
Plaintiff,
vs.

FORT WAYNE BOOKS, INC., CINEMA BLUE OF FORT WAYNE, INC., EROTICA HOUSE BOOKSTORE, INC., MR. DONALD KRONTZ; MR. DONALD KRONTZ IN HIS CAPACITY AS MANAGER OF FORT WAYNE BOOKS, INC., MANAGER OF CINEMA BLUE OF FORT WAYNE, INC., MANAGER OF EROTICA HOUSE BOOKSTORE, INC.; DR. DONALD KRONTZ IN HIS CAPACITY AS A MEMBER OF THE BOARD OF DIRECTORS OF FORT WAYNE BOOKS, INC., CINEMA BLUE OF FORT WAYNE, INC., EROTICA HOUSE BOOKSTORE, INC.; MARK A. BROOKS, THE GROUP d/b/a/ EUROPEAN INVESTMENTS N V, THE GROUP d/b/a THEATRE A CORPORATION, NANCY S. JOHNSON, CYRUS B. COOPER,
Defendants.

VERIFIED PETITION FOR SEIZURE OF PROPERTY SUBJECT TO FORFEITURE AND PROBABLE CAUSE AFFIDAVIT

Comes now Stephen M. Sims, Prosecuting Attorney for the Thirty-Eighth Judicial Circuit, State of Indiana, and pursuant to Indiana Code 35-4-30.5-3 (b) respectfully moves this Court for an Order directing the Sheriff of Allen County to immediately seize and inventory all property "subject to forfeiture" as set forth in the complaint of your petitioner as heretofore filed in this cause on the 19th day of March, 1984, and in support thereof says as follows:

1. That your petitioner is the duly elected and serving Prosecutor for the Thirty-Eighth Judicial Circuit for the State of Indiana;

2. That your petitioner is, in his capacity as Prosecuting Attorney for said Judicial Circuit, the plaintiff in the above-entitled cause;

3. Your plaintiff hereby incorporates as an integral part hereof all of the allegations set forth in his "Complaint For Injunctive Relief From Corrupt Business Influence And Action For Forfeiture Of Property Incident To Corrupt Business Influence" heretofore filed by him in this cause pursuant to Indiana Code 34-4-30.5-2 and Indiana Code 34-4-30.5-3 (a) on the 19th day of March, 1984;

4. The plaintiff believes and has good cause to believe that a "group" or "enterprise" exists in Allen County, Indiana, and is maintaining certain real and personal property which is property used in the course of, intended for use in the course of, property derived from, or real-

ized through, conduct in violation of Indiana Code 35-45-6-2. In particular that the "enterprise" or "group" have used, are using, or plan to use certain real estate, buildings, and the entire contents of said buildings, same having been realized through, derived from, or are being used in the course of, or intended for use in the course of, conduct in violation of Indiana Code 35-45-6-2, in particular, the following real estate and contents:

a) certain real estate commonly known as Fort Wayne Books, Inc., 227 Pearl Street, Fort Wayne, Allen County, Indiana, together with all of its contents whether same be real or personal;

b) certain real estate commonly known as Erotica House Bookstore, Inc., 930 Broadway, Fort Wayne, Allen County, Indiana, together with all of its contents whether same be real or personal;

c) certain real estate commonly known as Cinema Blue of Fort Wayne, Inc., 2441 Broadway, Fort Wayne, Allen County, Indiana, with all of its contents whether same be real or personal;

The State further asks for the immediate seizure and impoundment of the following personal property:

a) all of the bank accounts located in the State of Indiana in which Fort Wayne Books, Inc., Cinema Blue of Fort Wayne, Inc., Erotica House Bookstore, Inc., have an interest or ownership;

b) all liquid assets located in the State of Indiana in which Fort Wayne Books, Inc., Cinema Blue of Fort Wayne, Inc., Erotica House Bookstore, Inc. have an interest or ownership.

5. That your petitioner incorporates herein as Exhibit "A" the Probable Cause Affidavit executed by Fort Wayne police officer Charles Dennis and suggests to the

Court that said Probable Cause Affidavit, independently or in conjunction with testimony given by said officer on the 19th day of March, 1984, constitutes "probable cause" to believe that a violation of Indiana Code 35-45-6-2 is and has been continuing with regard to that certain real estate, personal property, including bank accounts as specifically set forth in Paragraph 4 of this petition.

WHEREFORE, pursuant to Indiana Code 34-4-30.5-3 (b) and Indiana Code 34-4-30.5-4 (b), your plaintiff prays this Court will enter an Order directing the Sheriff of Allen County to immediately seize that certain real estate, the buildings thereon, and all contents of said buildings commonly known as:

1. Certain real estate commonly known as Fort Wayne, Books, Inc., 227 Pearl Street, Fort Wayne, Allen County, Indiana; together with all of its contents whether same be real or personal;
2. Certain real estate commonly known as Erotica House Bookstore, Inc., 930 Broadway, Fort Wayne, Allen County, Indiana, together with all of its contents whether same be real or personal;
3. Certain real estate commonly known as Cinema Blue of Fort Wayne, Inc., 2441 Broadway, Fort Wayne, Allen County, Indiana, with all of its contents whether same be real or personal;

by placing same under seal and inventorying same (as determined reasonable under all circumstances by said Sheriff) and authorizing said Sheriff to remove special items of property if, in his discretion, he deems same appropriate. That officers of the Fort Wayne Police Department be authorized to assist the Sheriff of Allen County in taking custody of any of the personal property or in securing any real property and maintaining same

under seal. Further, that any liquid assets of said three corporations, to-wit: Fort Wayne Books, Inc., Erotica House Bookstore, Inc., and Cinema Blue of Fort Wayne, Inc., within the State of Indiana, be frozen, seized or impounded through seal, pending forfeiture and final disposition of this cause.

The plaintiff further prays that the Court will award expenses and costs of this action and such reasonable attorney fees as the Court may deem appropriate to the Treasurer of Allen County, as a reimbursement to the County for extraordinary expenses and time expenditures involved in this action pursuant to Indiana Code 34-4-30.5-2 (6) and for all other just and proper relief in the premises.

Respectfully submitted,

/s/ Stephen M. Sims
Stephen M. Sims
Prosecuting Attorney
38th Judicial Circuit
State of Indiana

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

I affirm under the penalties of perjury that the foregoing Verified Petition For Seizure of Property Subject To Forfeiture is true and accurate to the best of my knowledge and belief.

/s/ Stephen M. Sims
Prosecuting Attorney
38th Judicial Circuit
State of Indiana

(Certificate of Service omitted in printing.)

EXHIBIT "A"

IN THE ALLEN CIRCUIT COURT

CAUSE NO._____

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

STATE OF INDIANA)
)
VS.)
)
FORT WAYNE BOOKS, INC.)
CINEMA BLUE OF FORT)
WAYNE, INC.)
EROTICA HOUSE BOOKSTORE,)
INC., MR. DONALD KRONTZ:)
MR. DONALD KRONTZ IN HIS)
CAPACITY AS MANAGER OF)
FORT WAYNE BOOKS, INC.,)
MANAGER OF CINEMA BLUE)
OF FORT WAYNE, INC.,)
MANAGER OF EROTICA)
HOUSE BOOKSTORE, INC.;)
MR. DONALD KRONTZ IN HIS)
CAPACITY AS A MEMBER OF)
THE BOARD OF DIRECTORS)
OF FORT WAYNE, INC.,)
CINEMA BLUE OF)
FORT WAYNE, INC.,)
EROTICA HOUSE BOOKSTORE,)
INC.; MARK A. BROOKS,)
THE GROUP d/b/a EUROPEAN)
INVESTMENTS N V,)
THE GROUP d/b/a THEATRE A)
CORPORATION, NANCY S.)
JOHNSON, CYRUS B. COOPER,)
)
Defendants.)

AFFIDAVIT FOR PROBABLE CAUSE

1. The undersigned swears and affirms, under the penalties for perjury, that he has good cause to believe that:

From on or about the 8th day of June, 1981, up to and including the 19th day of March, 1984, at the County of Allen and in the State of Indiana, said defendants did as a "group" or "enterprise" knowingly or intentionally receive proceeds directly or indirectly, derived from a pattern of racketeering activity, and that said defendants as a "group" or "enterprise" used or invested those proceeds or the proceeds derived from them to acquire an interest in real property or to establish or to operate an enterprise; and that through a pattern of "racketeering activity", knowingly or intentionally acquired or maintained, either directly or indirectly, an interest in or control of real property or an enterprise; or operating as a "group" or "enterprise" were employed by or associated with an enterprise, and that said "group" knowingly or intentionally conducted or otherwise participated in the activities of that enterprise through a pattern of racketeering activity; and that said defendants violated Indiana Code 35-30-10.1-2 and Indiana Code 35-49-3-1 and Indiana Code 35-45-6-2.

2. The defendants, respectively, are described as follows:

a) Fort Wayne Books, Inc. is a "group" or Indiana corporation which began its corporate existence on the 4th day of April, 1979, and which has continued in existence up to and including the date of the filing of this affidavit. Said defendant operates a business at 227 Pearl Street, Fort Wayne, Allen County, Indiana,

and has listed its resident agent as C T Corporation System, 1011 Merchants Bank Building, Indianapolis, Indiana 46204;

b) Cinema Blue of Fort Wayne, Inc., is a "group" or Delaware corporation which received its "Certificate of Admission" to operate in the State of Indiana on the 6th day of July, 1978, and which has continued its operation in the State of Indiana up to and including the date of the filing of this complaint. Said defendant has from 1981 up to and including the date of the filing of this complaint operated a business at 2441 Broadway, Fort Wayne, Allen County, Indiana. It has listed its resident agent for service of process as C T Corporation System, 1011 Merchants Bank Building, Indianapolis, Indiana 46204;

c) Erotica House Bookstore, Inc. is a "group" or Indiana corporation which began its corporate existence on the 3rd day of March, 1980, and which has continued in existence up to and including the date of the filing of this affidavit. That the Erotica House Bookstore, Inc. has from 1981 up to and including the date of the filing of this complaint operated a business at 930 Broadway, Fort Wayne, Allen County, Indiana. That said defendant has listed its resident agent for service of process as C T Corporation System, 1011 Merchants Bank Building, Indianapolis, Indiana 46204;

d) Mr. Donald Krontz, male white, age 26, date-of-birth 7/22/57, subject is approximately 5′ 9″ tall, 215#, complexion medium, build large, hair black, eyes hazel Social Security #313-64-1947, address: 8543 Marsh Road, Algonac, Michigan 48001;

e) Mark A. Brooks, male black, age 29, date-of-birth 3/6/55, Social Security #307-70-1786, address: 1145 Clay Street, Fort Wayne, Indiana 46802;

f) The Group d/b/a European Investments N V, whose last known address is P.O. Box 408, Durand, Michigan 48429;

g) The Group d/b/a Theatre A Corporation, a "group" or corporation whose address is 819 Southeast Second Street, Evansville, Indiana 47713;

h) Nancy S. Johnson, female white, age 45, date-of-birth 2/ /39, subject is approximately 5′ 2″ tall, 119#, Social Security #303-40-2855; business address: 227 Pearl Street, Fort Wayne, Indiana 46802;

i) Cyrus B. Cooper, male white, 4815 Old Mill Road, Fort Wayne, Indiana 46807.

2. That your affiant, Officer Charles Dennis, is a police officer with the Fort Wayne Police Department, Vice Division. That your affiant has from the 7th day of June, 1981, up to and including the date of this affidavit, had vice responsibilities with said Fort Wayne Police Department. That from the 7th day of June, 1981, up to and including the date of the filing of this affidavit, your affiant as a part of his duties with the Fort Wayne Police Department has continuously monitored the general activities of the following group:

a) Fort Wayne Books, Inc. located at 227 Pearl Street, Fort Wayne, Allen County, Indiana;

b) Cinema Blue of Fort Wayne, Inc. located at 2441 Broadway, Fort Wayne, Allen County, Indiana;

c) Erotica House Bookstore, Inc. located at 930 Broadway, Fort Wayne, Allen County, Indiana;

That in his official capacity as a Fort Wayne Police vice officer, your affiant has in the course of his investigation become aware of the following facts:

a) that the "group" or "enterprise" known as Fort Wayne Books, Inc., Cinema Blue of Fort Wayne, Inc., and Erotica House Bookstore, Inc. have operated at the addresses set forth hereinbefore con-

tinuously from the 8th day of June, 1981, up to and including the time of the filing of this affidavit;

b) that the defendant corporations or their employees acting in the normal course of business and with actual authority have been convicted by the Allen Superior Court of violations of Indiana Code 35-30-10.1-2 and Indiana Code 35-49-3-1, same being "Distribution of Obscene Matter For Consideration" in such a manner as to constitute a violation of Indiana Code 35-45-6-2.

By way of example, your affiant would show the Court that:

a) that Fort Wayne Books, Inc. did commit a criminal act on the 8th day of June, 1981, and that under Cause No. CRM-81-10113 said corporation was convicted of two counts of distributing obscene matter for consideration. That this criminal activity occurred at 227 Pearl Street, Fort Wayne, Allen County, Indiana, and that the human agent for the book store was Alan H. Sedelbauer;

b) that on or about the 15th day of June, 1981, Alan H. Sedelbauer did distribute obscene matter for consideration while acting as an agent for Fort Wayne Books, Inc., 227 Pearl Street, Fort Wayne, Allen County, Indiana, during the normal course of business and that said Alan H. Sedelbauer was convicted in the Allen Superior Court in Cause No. CRM-81-10114;

c) that on or about the 11th day of February, 1982, Alan H. Sedelbauer did distribute obscene matter for consideration while acting as an agent for Fort Wayne Books, Inc., 227 Pearl Street, Fort Wayne, Allen County, Indiana, during the normal course of business and that said Alan H. Sedelbauer was convicted in the Allen Superior Court in Cause No. CRM-82-2771;

d) that on or about the 13th day of May, 1982, James D. Fry did distribute obscene matter for consideration while acting as an agent for Fort Wayne Books, Inc., 227 Pearl Street, Fort Wayne, Allen County, Indiana, during the normal course of business and that said James D. Fry was convicted in the Allen Superior Court in Cause CRM-82-14254;

e) that on or about the 10th day of June, 1982, James D. Harp, did distribute obscene matter for consideration while acting as an agent for Fort Wayne Books, Inc., 227 Pearl Street, Fort Wayne, Allen County, Indiana, during the normal course of business and that said James D. Harp was convicted in the Allen Superior Court in Cause CRM-82-14255;

f) that on or about the 9th day of August, 1982, Barry W. Dangler, did distribute obscene matter for consideration while acting as an agent for Fort Wayne Books, Inc., 227 Pearl Street, Fort Wayne, Allen County, Indiana, during the normal course of business and that said Barry W. Dangler was convicted in the Allen Superior Court in Cause No. CRM-82-14253;

g) that Fort Wayne Books, Inc. did commit a criminal act on the 28th day of September, 1982, and that under Cause No. CRM-82-22385 said corporation was convicted of distributing obscene matter for consideration. That this criminal activity occurred at 227 Pearl Street, Fort Wayne, Allen County, Indiana, and that the human agent for the book store was Daniel L. Morgan;

h) that Fort Wayne Books, Inc. did commit a criminal act on the 29th day of September, 1982, and that under Cause No. CRM-82-22386 said corporation was convicted of distributing obscene matter for consideration. That this criminal activity occurred at 227 Pearl Street, Fort Wayne, Allen

County, Indiana, and that the human agent for the book store was Daniel L. Morgan;

i) that Fort Wayne Books, Inc. did commit a criminal act on the 1st day of December, 1982, and that under Cause No. CRM-82-22452 said corporation was convicted of distributing obscene matter for consideration. That this criminal activity occurred at 227 Pearl Street, Fort Wayne, Allen County, Indiana, and that the human agent for the book store was Anthony L. Leedy;

j) that on or about the 9th day of May, 1983, the 10th day of May, 1983 and the 7th day of June, 1983, Daniel L. Morgan did distribute obscene matter for consideration while acting as an agent for Fort Wayne Books, Inc., 227 Pearl Street, Fort Wayne, Allen County, Indiana, during the normal course of business and that said Daniel L. Morgan was convicted in the Allen Superior Court in Cause No. CR-83-384;

k) that on or about the 9th and 13th days of May, 1983, and the 3rd day of June, 1983, Mark A. Brooks did distribute obscene matter for consideration while acting as an agent for Fort Wayne Books, Inc., 227 Pearl Street, Fort Wayne, Allen County, Indiana, during the normal course of business and that said Mark A. Brooks was convicted in the Allen Superior Court in Cause No. CR-83-386;

1) that on or about the 21st day of November, 1983, and the 5th day of December, 1983, Mark A. Brooks did distribute obscene matter for consideration while acting as an agent for Fort Wayne Books, Inc., 227 Pearl Street, Fort Wayne, Allen County, Indiana, during the normal course of business and that said Mark A. Brooks was convicted in the Allen Superior Court in Cause No. CR-83-513;

m) that Erotica House Bookstore, Inc. did commit a criminal act on the 15th day of June, 1981, and that under Cause No. CRM-81-9439 said corporation was convicted of two counts of distributing obscene matter for consideration. That this criminal activity occurred at 930 Broadway, Fort Wayne, Allen County, Indiana, and that the human agent for the book store was Lee Bickel;

n) that Erotica House Bookstore, Inc. did commit a criminal act on the 2nd day of February, 1982, and that under Cause No. CRM-82-2767 said corporation was convicted of distributing obscene matter for consideration. That this criminal activity occurred at 930 Broadway, Fort Wayne, Allen County, Indiana, and that the human agent for the book store was Lee Bickel;

o) that Erotica House Bookstore, Inc. did commit a criminal act on the 10th day of February, 1982, and that under Cause No. CRM-82-2768 said corporation was convicted of distributing obscene matter for consideration. That this criminal activity occurred at 930 Broadway, Fort Wayne, Allen County, Indiana, and that the human agent for the book store was Lee Bickel;

p) that Erotica House Bookstore, Inc. did commit a criminal act on the 7th day of June, 1982, and that under Cause No. CRM-82-14257 said corporation was convicted of distributing obscene matter for consideration. That this criminal activity occurred at 930 Broadway, Fort Wayne, Allen County, Indiana, and that the human agent for the book store was Anthony L. Leedy;

q) that Erotica House Bookstore, Inc. did commit a criminal act on the 7th day of July, 1982, and that under Cause No. CRM-82-14252 said corporation was convicted of distributing obscene matter for consideration. That this criminal activity occurred at 930 Broadway, Fort Wayne, Allen

County, Indiana, and that the human agent for the book store was Lee J. Bickel;

r) that Erotica House Bookstore, Inc. did commit a criminal act on the 2nd day of August, 1982, and that under Cause No. CRM-82-14256 said corporation was convicted of distributing obscene matter for consideration. That this criminal activity occurred at 930 Broadway, Fort Wayne, Allen County, Indiana, and that the human agent for the book store was Nancy S. Johnson;

s) that Erotica House Bookstore, Inc. did commit a criminal act on the 4th day of August, 1982, and that under Cause No. CRM-82-16918 said corporation was convicted of distributing obscene matter for consideration. That this criminal activity occurred at 930 Broadway, Fort Wayne, Allen County, Indiana. and that the human agent for the book store was Lee J. Bickel;

t) that Erotica House Bookstore, Inc. did commit a criminal act on the 10th day of August, 1982, and that under Cause No. CRM-82-16919 said corporation was convicted of distributing obscene matter for consideration. That this criminal activity occurred at 930 Broadway, Fort Wayne, Allen County, Indiana, and that the human agent for the book store was Lee Joseph Bickel;

u) that Erotica House Bookstore, Inc. did commit a criminal act on the 18th day of August, 1982, and that under Cause No. CRM-82-16924 said corporation was convicted of distributing obscene matter for consideration. That this criminal activity occurred at 930 Broadway, Fort Wayne, Allen County, Indiana, and that the human agent for the book store was Nancy Johnson;

v) that Erotica House Bookstore, Inc. did commit a criminal act on the 25th day of August, 1982, and that under Cause No. CRM-82-16922 said corporation was convicted of distributing obscene matter

for consideration. That this criminal activity occurred at 930 Broadway, Fort Wayne, Allen County, Indiana, and that the human agent for the book store was James D. Harp;

w) that on or about the 14th day of September, 1982, James D. Fry did distribute obscene matter for consideration while acting as an agent for Erotica House Bookstore, Inc., 930 Broadway, Fort Wayne, Allen County, Indiana, during the normal course of business and that said James D. Fry was convicted in the Allen Superior Court in Cause No. CRM-82-16920;

x) that on or about the 14th day of September, 1982, James D. Fry did distribute obscene matter for consideration while acting as an agent for Erotica House Bookstore, Inc., 930 Broadway, Fort Wayne, Allen County, Indiana, during the normal course of business and that said James D. Fry was convicted in the Allen Superior Court in Cause No. CRM-82-16921;

y) that on or about the 28th day of September, 1982, James D. Fry did distribute obscene matter for consideration while acting as an agent for Erotica House Bookstore, Inc., 930 Broadway, Fort Wayne, Allen County, Indiana, during the normal course of business and that said James D. Fry was convicted in the Allen Superior Court in Cause No. CRM-82-22383;

z) that Erotica House Bookstore, Inc. did commit a criminal act on the 29th day of September, 1982, and that under Cause No. CRM-82-22384 said corporation was convicted of distributing obscene matter for consideration. That this criminal activity occurred at 930 Broadway, Fort Wayne, Allen County, Indiana, and that the human agent for the book store was James D. Harp;

aa) that on or about the 9th and 11th days of May, 1983 and the 7th day of June, 1983, Robbie D. Woods did distribute obscene matter for consideration while acting as an agent for Erotica House Bookstore, Inc., 930 Broadway, Fort Wayne, Allen County, Indiana, during the normal course of business and that said Robbie D. Woods was convicted in the Allen Superior Court in Cause No. CR-83-383;

bb) that on or about the 21st and 29th days of November, 1983 and the 13th day of December, 1983, Dean L. Maggart did distribute obscene matter for consideration while acting as an agent for Erotica House Bookstore, Inc., 930 Broadway, Fort Wayne, Allen County, Indiana, during the normal course of business and that said Dean L. Maggart was convicted in the Allen Superior Court in Cause No. CR-83-510;

cc) that on or about the 29th day of November, 1983 and the 1st day of December, 1983, Nancy S. Johnson did distribute obscene matter for consideration while acting as an agent for Fort Wayne Books, Inc., 227 Pearl Street, Fort Wayne, Allen County, Indiana, during the normal course of business and that said Nancy S. Johnson was convicted in the Allen Superior Court in Cause No. CR-83-509;

dd) that on or about the 4th day of February, 1982 Suzanne Krontz did distribute obscene matter for consideration while acting as an agent for Cinema Blue of Fort Wayne, Inc., 2441 Broadway, Fort Wayne, Allen County, Indiana, during the normal course of business and that said Suzanne Krontz was convicted in the Allen Superior Court in Cause No. CRM-82-2769;

ee) that Cinema Blue of Fort Wayne, Inc. did commit a criminal act on the 16th day of February, 1982, and that under Cause No. CRM-82-2770 said corporation was convicted of distributing obscene matter for consideration. That this criminal ac-

tivity occurred at 2441 Broadway, Fort Wayne, Allen County, Indiana, and that the human agent for the book store was Suzanne Krontz;

ff) that Cinema Blue of Fort Wayne, Inc. did commit a criminal act on the 10th day of June, 1982, and that under Cause No. CRM-82-14251 said corporation was convicted of distributing obscene matter for consideration. That this criminal activity occurred at 2441 Broadway, Fort Wayne, Allen County, Indiana, and that the human agent for the book store was Lloyd C. Ashley;

gg) that Cinema Blue of Fort Wayne, Inc. did commit a criminal act on the 1st day of July, 1982, and that under Cause No. CRM-82-16917 said corporation was convicted of distributing obscene matter for consideration. That this criminal activity occurred at 2441 Broadway, Fort Wayne, Allen County, Indiana, and that the human agent for the book store was Lloyd C. Ashley;

hh) that on or about the 8th day of July, 1982, Ronald E. Richards, Jr. did distribute obscene matter for consideration while acting as an agent for Cinema Blue of Fort Wayne, Inc., 2441 Broadway, Fort Wayne, Allen County, Indiana, during the normal course of business and that said Ronald E. Richards was convicted in the Allen Superior Court in Cause No. CRM-82-14258;

ii) that Cinema Blue of Fort Wayne, Inc. did commit a criminal act on the 14th day of September, 1982, and that under Cause No. CRM-82-16923 said corporation was convicted of distributing obscene matter for consideration. That this criminal activity occurred at 2441 Broadway, Fort Wayne, Allen County, Indiana, and that the human agent for the book store was Nancy Johnson;

jj) that Cinema Blue of Fort Wayne, Inc. did commit a criminal act on the 1st day of December, 1982, and that under Cause No. CRM-82-22451 said corporation was convicted of distributing obscene matter for consideration. That this criminal activity occurred at 2441 Broadway, Fort Wayne, Allen County, Indiana, and that the human agent for the book store was Mary K. Krontz;

kk) that on or about the 21st and 29th days of November, 1983, Ronald E. Richards, Jr. did distribute obscene matter for consideration while acting as an agent for Cinema Blue of Fort Wayne, Inc., 2441 Broadway, Fort Wayne, Allen County, Indiana, during the normal course of business and that said Ronald E. Richards, Jr. was convicted of Counts I and III in Cause No. CR-83-511 in the Allen Superior Court;

ll) that on or about the 7th day of December, 1983, Ronald E. Richards, Jr. did distribute obscene matter for consideration while acting as an agent for Erotica House Bookstore, Inc., 930 Broadway, Fort Wayne, Allen County, Indiana, during the normal course of business and that said Ronald E. Richards, Jr. was convicted of Count II in Cause No. CR-83-511 in the Allen Superior Court;

mm) that on or about the 22nd and 30th days of November, 1983, Mary Kathleen Krontz did distribute obscene matter for consideration while acting as an agent for Cinema Blue of Fort Wayne, Inc., 2441 Broadway, Fort Wayne, Allen County, Indiana, during the normal course of business and that said Mary Kathleen Krontz was convicted in the Allen Superior Court of two counts in Cause No. CR-83-512.

4. Your affiant, Officer Charles Dennis, swears and affirms that in the course of his investigation he has reviewed all of the aforesaid cause numbers and has personally examined the charging information in each and every one of said charges and in addition thereto has personally examined a certified copy of the guilty

findings in each of said causes. That he has compared photo-copies of each of the charges and of the certified copies, personally inspecting all of same. That he attaches hereto as an integral part of his affidavit true and accurate photo-copies of the charges referred to hereinabove and copies of the findings of the Allen Superior Court in each of same. Said exhibits are marked "A-1 through A-39" inclusive as an integral part hereof.

5. That your affiant in the course of his duty has worked daily with Officer Dennis Anspach. That Dennis Anspach is and has been a member of the Fort Wayne Police Department assigned to the Vice Division and has been with such division for a period of approximately three years. That said Officer Dennis Anspach and your affiant have personally reviewed together a certain certified copy of a guilty plea at which Officer Dennis Anspach was personally present. That said guilty plea was State of Indiana v. Suzanne Krontz, Cause No. CRM-82-2770, State of Indiana v. Mary Kathleen Krontz, Cause No. CRM-82-22451 State of Indiana v. Lloyd C. Ashley, Cause No. CRM-82-16917 and CRM-82-14251, and State of Indiana v. Anthony L. Leedy, Cause No. CRM-82-14257 and CRM-82-22452, and State of Indiana v. Alan H. Sedelbauer, Cause No. CRM-81-10113, and State of Indiana v. James D. Harp, Cause No. CRM-82-16922 and CRM-82-22384 and CRM-82-14255 and CRM-82-05784. That both officers reviewed said certified copy and compared the certified copy with a photo-stat of same, which has been marked as Exhibit "A-40", and your affiant certifies that it is a true and accurate copy of

the guilty plea in the afore-captioned causes which took place on or about the 1st day of July, 1983, in the Allen Superior Court. Said Exhibit "A-40" is attached hereto as a true and accurate representation of what it purports to show as an integral part hereof.

6. Said Exhibit "A-40" demonstrates that Mr. Donald Krontz was an employee of Fort Wayne Books, Inc., Cinema Blue of Fort Wayne, Inc., and Erotica House Bookstore, Inc. In addition, said transcript clearly indicates that Mr. Donald Krontz was not only an employee but was the manager of each of said book stores and a member of the board of directors of each of said book stores.

7. That as an integral part of Exhibit "A-40" there was admitted into evidence the Certificate of Incorporation for Fort Wayne Books, Inc. and an action by unanimous consent of the sole members of the board of directors of Fort Wayne Books, Inc. as well as the Certificate of Incorporation for Erotica House Bookstore, Inc. and an action by unanimous consent of the sole members of the board of directors for said Erotica House Bookstore, Inc. and the Certificate of Admission of Cinema Blue of Fort Wayne, Inc. as well as an action by unanimous consent of the sole members of the board of directors of Cinema Blue of Fort Wayne, Inc., which are included herein as Exhibits "A-40, 41, 42, 43, 44, 45, and 46" respectively and your affiant certifies that they are true and accurate copies of those that went into evidence on July 1, 1983. Your affiant knows this because he has personally received the certified transcript and has compared these copies with the certified copy and has compared them in the

presence of Dennis Anspach to confirm their correctness.

8. That your affiant has interacted with other officers who, in checking public records to determine ownership, examined the Allen County Tax Statements of 1982 and 1983 re that certain property known as 227 Pearl Street, Fort Wayne, Allen County, Indiana. That your affiant attaches as Exhibit "A-47" a photocopy showing the party in interest as European Investments N V with a post office address of P.O. Box 408, Durand, Michigan. Further investigation by officers of the Vice Division in a review of the records of Erotica House Bookstore, Inc. show that Erotica House Bookstore, Inc. filed a business tangible personal property return Form 104 indicating that the place for assessment to be mailed for that corporation was: P.O. Box 408, Durand, Michigan 48429. A copy of said business tangible personal property return Form 104 is attached hereto as Exhibit "A-48". The conclusion which your affiant drew from examination of both of said documents indicates that the two entities are "in fact associated".

9. Further investigation by Vice Division officers produced an additional Allen County Tax Statement for 1981 payable 1982, a copy of which is attached hereto, confirming that Erotica House Bookstore, Inc. tax information was forwarded to P.O. Box 408, Durand, Michigan, attachment as Exhibit "A-49".

10. Your affiant swears that on or about the 15th day of March, 1984, he along with other vice officers of the Fort Wayne Police Department did enter that establishment commonly known as Fort Wayne Books, Inc. at 227 Pearl Street, Fort Wayne, Allen County, Indiana, and did observe one Mark A. Brooks, an employee of said establishment, on duty. That officers of the Fort Wayne Police Department purchased "tokens" from said Mark A. Brooks for the purpose of reviewing certain "video tapes" which are exhibited in said establishment. That your affiant, Officer Charles Dennis, did personally use said tokens to view video films in Booth 9, 10, 12 and 13 in said establishment. Those video booths being at the rear of said establishment. That after viewing said films, it was the belief of said officer that said motion pictures which he observed were obscene in that they depict in a patently offensive way sexual conduct and that the average person applying contemporary community standards would find that the dominant theme of the matter or performance taken as a whole appealed to the prurient interest in sex and that the films separately or jointly, taken as a whole, lacked serious literary, artistic, political or scientific value. That said officer took with him an audio recording device and described the scenes observed at the time that said films were viewed. That said officer has preserved those four audio cassettes and protected their chain of custody until bringing them to court today and they have been marked for evidence purposes as State's Exhibit "50, 51, 52 and 53, respectively".

11. That in addition, on or about the 16th day of March, 1984, your affiant and other Fort Wayne Police Department Vice Division officers did enter that enterprise known as Fort Wayne Books, Inc., 227 Pearl

Street, Fort Wayne, Allen County, Indiana, and did jointly purchase tokens and that said police officers jointly witnessed twelve films and that it was their belief and your affiant's belief that said motion pictures which they saw were obscene in that the average person applying contemporary community standards would find that the dominant theme of the matter of each and every film taken as a whole appealed to the prurient interest in sex and that the matter or performance depicted in a patently offensive way sexual conduct and that the matter in the films taken as a whole lacked serious literary, artistic, political, or scientific value. That the officers recorded their observations on audio equipment at that time and that said audio cassettes have been marked as State's Exhibits "54 through 65, inclusive". That said cassettes have been unaltered and have been preserved in the custody of the Vice Division of the Fort Wayne Police Department until brought to court on this date. That said twelve tapes, as well as Exhibits 50 through 53, inclusive, are true and accurate representations of what they purport to show.

12. That your affiant is aware that Fort Wayne Police Department Vice Officers working as a part of his division checked Allen County Tax Statements with regard to that certain property commonly known as 2441 Broadway, Fort Wayne, Allen County, Indiana. That a copy in the name of Theatre A Corporation, 819 Southeast Second Street, Evansville, Indiana 47713, and a true and accurate copy of said Tax Statement is included herein as Exhibit "A-66".

13. That on or about the 15th day of March, 1984, your affiant accompanied other officers of the Fort Wayne Police Department Vice Division to that real estate commonly known as Cinema Blue of Fort Wayne, Inc., 2441 Broadway, Fort Wayne, Allen County, Indiana. That your affiant and other police officers used "tokens" and observed six films at said establishment. That it is the opinion of your affiant, who viewed three of said films, and Officer Joe DiFilippo, who viewed three of said films, that each and every one of said films seen on said "video machines" at said establishment were obscene in that the average person, applying contemporary community standards, would find that the dominant theme of the matter or performance in said films, taken as a whole, appeal to the prurient interest in sex; and that the matter or performance in each of said films depicted in a patently offensive way sexual conduct; and that the matter in each of said films, taken as a whole, lack serious literary, artistic, political or scientific value. That your affiant and Officer Joe DiFilippo carried with them a recording device and orally described what they observed on the screen in each said case and that the audio tapes have been preserved by the Fort Wayne Police Department Vice Division and remain unaltered and a true and accurate representation of what they purport to show. That they are attached hereto as Exhibits "A-67 through 72, inclusive".

14. That on or about the 16th day of March, 1984, your affiant personally went to the same establishment,

that is Cinema Blue of Fort Wayne, Inc., 2441 Broadway, Fort Wayne, Allen County, Indiana, and viewed an additional two films. That those films were, in the opinion of your affiant, obscene in that it is his belief from his experience that the average person, applying contemporary community standards, would find both of said films appeal to the prurient interest in sex; and that the matter or performance depicted in each of said films in a patently offensive way sexual conduct; and that the matter in each film, taken as a whole, lacked serious literary, artistic, poli[illegible]al or scientific value. That your affiant has preserv[illegible]d by means of audio descriptions taken at the time, two tapes describing the actions on those films, and that they are attached hereto in unaltered form as true and accurate representations of what they purport to show. State's Exhibits "73 and 74".

15. That your affiant, through investigation with other police officers of the Fort Wayne Police Department, has found that records indicate that Cyrus B. Cooper has an interest in that real estate commonly known as 930 Broadway, Fort Wayne, Allen County, Indiana.

16. That on March 15, 1984, your affiant went to that certain establishment called Erotica House Bookstore, Inc. at 930 Broadway, Fort Wayne, Allen County, Indiana, and did use "tokens" provided by the enterprise to view three video tapes or movies at said establishment. That at the time your affiant viewed said films, he carried with him an audio recorder whereby he did, on separate tapes, record what he

was observing with regard to said three films. That it is the belief of your affiant that each of said three films are pornographic inasmuch as they appeal to the prurient interest in sex and that the average person, applying contemporary community standards, would find that the dominant theme of the matter or performance of each of said films taken as a whole, appeal to the prurient interest in sex; and that the matter or performance depicts in a patently offensive way sexual conduct and that the matters in each film, taken as a whole, lack serious literary, artistic, political or scientific value. Your affiant has preserved intact said three tapes and has caused them to be marked as State's Exhibit "75, 76 and 77" herein. That each tape fairly and accurately depicts what it purports to show.

At the time your affiant entered the Erotica House Bookstore, Inc. on said date, he observed a Fort Wayne police officer purchase a magazine entitled "Cock Biter" and an additional magazine entitled "Ass Attack". In addition, your affiant observed one Nancy S. Johnson, an employee of said establishment, sell a magazine to an undercover vice officer, said magazine was entitled "Dick, Tit, Ass-Fucker". That your affiant has reviewed the chain of custody of all three magazines, placed his initials in each of said magazines for later identification. That he has brought with him to this Honorable Court said three magazines intact from the Vice Division custody and marked same as State's Exhibit "78, 79 and 80" inclusive.

17. That on or about the 16th day of March, 1984, your affiant observed vice officers of the Fort Wayne Police Department purchase two magazines in the normal course of business from that certain enterprise known as Erotica House Bookstore, Inc., 930 Broadway, Fort Wayne, Allen County, Indiana. Said magazines were entitled "Anal Thrust" and "Anal Virgin". Your affiant marked same with his initials for later identification. That the chain of custody has been preserved on same and he has brought those magazines with him for review by this Court as State's Exhibit "81 and 82" respectively.

18. That it is the belief of your affiant that all of the magazines purchased and alluded to heretofore in this affidavit are obscene and constitute a violation of Indiana Code, that is "Distribution of Obscene Matter for Consideration", inasmuch as it is the opinion of your affiant, after having reviewed all of said magazines, that they depict individually sexual activity without any restrictions which the average person applying contemporary community standards would find that the dominant theme of said alleged matters, taken as a whole, appeal to the prurient interest in sex; and that said matters depict in a patently offensive way sexual conduct; and that each magazine individually, taken as a whole, lacks serious literary, artistic, political, or scientific value.

19. That your affiant personally examined that certain establishment known as Fort Wayne Books, Inc., and Cinema Blue of Fort Wayne, Inc. on this the 19th day of March, 1984. That he has found from his visit

on this day, and the observation of a film at each of said establishments, that the basic nature of their business has remained the same as he has observed it from time to time from June 8, 1981, to present.

20. That your affiant has on this the 19th day of March, 1984, personally visited the Erotica House Bookstore, Inc. and has observed the said premises and has observed the purchase of a certain magazine entitled "____ ____ ____ ____ ____" That from the personal observations of this establishment it is the opinion and belief of your affiant that the basic nature of said establishment's business has remained unaltered from June 8, 1981, up to and including the present time. Your affiant has caused his initials to be placed in the magazine which was purchased on this the 19th March, 1984, and has kept said magazine in his visual observation from the time of its purchase until entering this Honorable Court. In reviewing said magazine, it is the belief of your affiant that said magazine constitutes a "distribution of obscene matter for consideration" in that it depicts sexual activity without any restrictions which the average person applying contemporary community standards must find that the dominant theme of such alleged material, taken as a whole, appeals to the prurient interest in sex; and that said matter depicts in a patently offensive way sexual conduct; that the matter taken as a whole lacks serious literary, artistic, political or scientific value. That said magazine has been marked for identification purposes as State's Exhibit "83".

21. That the source of the information which your affiant has related hereinabove in this affidavit is his

direct observation of these places of business from June 8, 1981, up to and including the present day, his direct review of court records, police files, and information gathered by his fellow officers pursuant to a joint investigation in which he has taken an active and uninterrupted part from June 8, 1981 to the present time.

Further your affiant sayeth naught.

/s/ Charles Dennis. Affiant

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Subscribed and sworn to before me this 19th day of March, 1984.

/s/ Gloria E. Trueblood, Notary Public
Resident of Allen County, Indiana

My Commission Expires:
August 30, 1987.

(Exhibits omitted in printing.)

IN THE ALLEN CIRCUIT COURT

CAUSE NO. 84-446

STATE OF INDIANA)
) ss:
COUNTY OF ALLEN)

STATE OF INDIANA AND STEPHEN M. SIMS, PROSECUTING ATTORNEY FOR THIRTY-EIGHTH JUDICIAL CIRCUIT,
Plaintiff,

vs.

FORT WAYNE BOOKS, INC., CINEMA BLUE OF FORT WAYNE, INC., EROTICA HOUSE BOOKSTORE, INC., MR. DONALD KRONTZ; MR. DONALD KRONTZ IN HIS CAPACITY AS MANAGER OF FORT WAYNE BOOKS, INC., MANAGER OF CINEMA BLUE OF FORT WAYNE, INC.; MANAGER OF EROTICA HOUSE BOOKSTORE, INC.; MR. DONALD KRONTZ IN HIS CAPACITY AS A MEMBER OF THE BOARD OF DIRECTORS OF FORT WAYNE BOOKS, INC., CINEMA BLUE OF FORT WAYNE, INC. EROTICA HOUSE BOOKSTORE, INC.; MARK A. BROOKS, THE GROUP d/b/a EUROPEAN INVESTMENTS N V, THE GROUP d/b/a THEATRE A CORPORATION, NANCY S. JOHNSON, CYRUS B. COOPER,
Defendants.

ORDER

(Filed March 19, 1984)

Comes now the Prosecuting Attorney of the 38th Judicial Circuit, Stephen M. Sims, and files his Complaint For Injunctive Relief From Corrupt Business Influence and Action For Forfeiture of Property Incident to Corrupt Business Influence pursuant to Indiana Code 34-4-30.5-2 and Indiana Code 34-4-30.5-3 (a) and comes now the Prosecuting Attorney and files his Petition for Seizure of Property Incident to Corrupt Business Influence pursuant to Indiana Code 34-4-30.5-3 and submits therewith a "Probable Cause Affidavit" as part thereof, which are in the following words and figures:

(H. I.)

And the Court having examined said petitions and probable cause affidavit and having heard evidence on same NOW FINDS THAT:

1. That said petitions and probable cause affidavit comply with requirements of Indiana Code 34-4-30.5-2 and Indiana Code 34-4-30.5-3;

2. That the Court having reviewed said petitions and probable cause affidavit and having heard evidence on same finds pursuant to Indiana Code 34-4-30.5-3 and Indiana Code 34-4-30.5-2;

a) That the Prosecuting Attorney for the 38th Judicial Circuit has filed an action for forfeiture of any property used in the course of, intended for the use in the course of, derived from or realized through conduct in violation of Indiana Code 35-45—6-2;

b) That said action was brought in the Allen Circuit Court, which has proper jurisdiction of same;

c) That the Prosecutor has properly filed a petition for property "subject to forfeiture" to be seized by a law enforcement agency, and has simultaneously filed a proper probable cause affidavit;

d) That the probable cause affidavit submitted with said petition for seizure of "property subject to forfeiture" does in and of itself establish probable cause and the Court now finds that there is probable cause that Fort Wayne Books, Inc., Cinema Blue of Fort Wayne, Inc., Erotica House Bookstore, Inc., and the other defendants, have formed an enterprise that is and has violated Indiana Code 35-45-6-2 and that said defendants have used the following specific real property, the buildings thereon and all of the contents of said buildings for actual use in the course of, or intended use in the course of, or that same have been derived from, or realized through, conduct in violation of Indiana Code 35-45-6-2:

i) Fort Wayne Books, Inc., 227 Pearl Street, Fort Wayne, Allen County, Indiana, together with the building and all of the contents of said building;

ii) Cinema Blue of Fort Wayne, Inc., 2441 Broadway, Fort Wayne, Allen County, Indiana, together with the building and all of the contents of said building;

iii) Erotica House Bookstore, Inc., 930 Broadway, Fort Wayne, Allen County, Indiana, together with the building and all of the contents of said building.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The Sheriff of Allen County is ordered to seize that property "subject to forfeiture" which is commonly known as:

a) Fort Wayne Books, Inc., 227 Pearl Street, Fort Wayne, Allen County, Indiana, together with the building thereon and all of the contents of said building, real or personal;

b) Cinema Blue of Fort Wayne, Inc., 2441 Broadway, Fort Wayne, Allen County, Indiana, together with the building thereon and all of the contents of said building, real or personal;

c) Erotica House Bookstore, Inc., 930 Broadway, Fort Wayne, Allen County, Indiana, together with the building thereon and all of the contents of said building, real or personal;

2. That pursuant to Indiana Code 34-4-30.5-4 (b), the Sheriff of Allen County is directed to make such seizure immediately upon receipt of this Order and may make such seizure in one or more of the following manners:

a) Place the property under seal;

b) Remove the property or any part thereof to a place designated by the Court; or

c) Require another agency authorized by law to take custody of the property and remove it to an appropriate location.

3. The Sheriff of Allen County is specifically authorized to use officers under his command to effectuate this Order as well as any Fort Wayne police officers allowed to him by the Fort Wayne Police Department;

4. The defendants, Fort Wayne Books, Inc., Cinema Blue of Fort Wayne, Inc., and Erotica House Bookstore, Inc., are ordered by this Court to avoid removing any liquid assets now in the State of Indiana from the State of Indiana, or from dissipating any bank accounts or secreting same until further order of this Court.

ALL OF WHICH IS ORDERED THIS 19TH DAY OF MARCH, 1984.

/s/ Thomas L. Ryan
Judge, Allen Circuit Court

IN THE ALLEN CIRCUIT COURT

CAUSE NO. CC-84-446

(Title omitted in printing.)

REQUEST FOR EXTENSION OF TIME

(Filed April 16, 1984)

The Defendants, DONALD KRONTZ, MARK A. BROOKS, and NANCY S. JOHNSON, by counsel, respectfully request an extension of time to respond to the Plaintiffs' Complaint, for the reason that the undersigned counsel needs additional time in which to investigate the facts of the matter for the purpose of forming an intelligent and proper response to the Complaint filed on March 19, 1984.

WHEREFORE, said Defendants, DONALD KRONTZ, MARK A. BROOKS, and NANCY S. JOHNSON, by counsel, respectfully move for an extension of time of 30 days within which to respond to the Complaint to and including May 16, 1984.

LEBAMOFF LAW OFFICES

By: /s/ Kenneth R. Scheibenberger
Kenneth R. Scheibenberger
918 South Calhoun Street
Fort Wayne, IN 46802
Telephone: 219/423-2581

ATTORNEYS FOR DEFENDANTS,
DONALD KRONTZ, MARK A. BROOKS,
and NANCY S. JOHNSON.

IN THE ALLEN CIRCUIT COURT

CAUSE NO. CC-84-446

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

STATE OF INDIANA AND STEPHEN M. SIMS, PROSECUTING ATTORNEY FOR THIRTY-EIGHTH JUDICIAL CIRCUIT,
Plaintiff,

vs.

FORT WAYNE BOOKS, INC., CINEMA BLUE OF FORT WAYNE, INC., EROTICA HOUSE BOOKSTORE, INC., MR. DONALD KRONTZ; MR. DONALD KRONTZ IN HIS CAPACITY AS MANAGER OF FORT WAYNE BOOKS, INC., MANAGER OF CINEMA BLUE OF FORT WAYNE, INC.; MANAGER OF EROTICA HOUSE BOOKSTORE, INC.; MR. DONALD KRONTZ IN HIS CAPACITY AS A MEMBER OF THE BOARD OF DIRECTORS OF FORT WAYNE BOOKS, INC., CINEMA BLUE OF FORT WAYNE, INC., EROTICA HOUSE BOOKSTORE, INC.; MARK A BROOKS, THE GROUP d/b/a EUROPEAN INVESTMENTS N V, THE GROUP d/b/a THEATRE A CORPORATION, NANCY S. JOHNSON, CYRUS B. COOPER,
Defendants.

ORDER

BE IT FURTHER REMEMBERED that afterwards, to-wit: on the 18th day of April, 1984, the following proceedings were had in the above entitled action before the Honorable Judge aforesaid, to-wit:

• • •

The Court, being duly advised in the premises now makes and enters the following finding, ruling, orders and judgment thereon, namely:

Court considers and DENIES in their entirety Defendants', Fort Wayne Books, Inc., Cinema Blue of Fort Wayne, Inc., and Erotica House Bookstore, Inc.:

1. Motion for Stay Pending Appeal filed April 3, 1984.

2. The Assignment of Error and;

3. Motion for Stay Pending Appeal filed April 12, 1984.

COURT GRANTS:

1. The Petition to Certify filed April 3, 1984 and the Supplemental Petition to *Crtify* filed April 12, 1984.

• • •

The Court files its written order of certification pursuant to App. Rule 4(B)(6).

IN THE
COURT OF APPEALS OF INDIANA
FOURTH DISTRICT

NO. 4-1283-A-415

(Title omitted in printing.)

REQUEST FOR EXPEDITIOUS RULING ON MOTION FOR STAY (MODIFICATION) FILED APRIL 27, 1984

TO: The Chief Judge of the Court of Appeals and the Associate Judges:

COME NOW Fort Wayne Books, Inc., Cinema Blue of Fort Wayne, Inc., and Erotic House Bookstore, Inc., defendants-appellants (hereinafter "Movants") in Case No. 3-484-A-106, consolidated with Case No. 4-1283-A-415 under the latter number by this Honorable Court on May 2, 1984, and respectfully move this Honorable Court to rule expeditiously on Movants' Motion for Stay (Modification) heretofore filed on April 27, 1984. In support of this Motion for Expeditious Ruling, Movants respectfully allege the following:

1. On or about March 19, 1983, plaintiff-appellee Stephen Sims, District Attorney for the Thirty-Eighth Judicial Circuit, and those in active concert with him, pursuant to the purported authority of orders issued by the Honorable Thomas L. Ryan, Judge of the Allen Circuit Court, sequestered all of the contents of Movants' bookstores and theaters. The said contents seized under provisions of the Indiana State Civil RICO statute, included tens of thousands of books, magazines and films as well as neutral mechanical items such as projectors, cash registers, and bookracks. Movants' locations were also sealed

at and from the time of sequestration with access to them denied to Movants' employees and the general public. Movants' businesses were and have been completely closed. The sole bases for the Civil RICO allegations were alleged violations of the state obscenity laws, some of which had resulted in final criminal convictions.

2. Movants promptly sought relief in the court below, all of which was sequentially denied; the last of such denials was on April 18, 1984.

3. Thereafter, Movant perfected an interlocutory appeal and prepared a Motion for Stay (Modification) pending appeal and filed said pleadings in this Honorable Court on April 27, 1984.

4. On May 2, 1984, plaintiff-appellee Sims, through counsel, filed a Verified Petition for Transfer of Case to the Supreme Court of Indiana in connection with the Fort Wayne matter (Case No. 3-484-A-106). On May 4, 1984, this Honorable Court *sua sponte,* issued an order consolidating the Fort Wayne case with a similar case, *4447 Corporation, World Wide Video Systems, Issi Theatre Corporation, Plaza Entertainment Center and Burton Gorelick v. Stephen Goldsmith,* (case No. 4-1283-A-415) then and now pending in this Honorable Court. The cases were consolidated under the number of the latter case. The *4447 Corporation* litigation involved a similar use of the Indiana Civil RICO statutes to sequester and padlock a bookstore and had been extensively briefed in this Honorable Court. It also had been the subject of a special hearing on an appellant's Motion for Stay, resulting in the granting by this Honorable Court of the requested Stay on February 6, 1984.

5. Shortly after this Honorable Court's consolidation of the two appeals, counsel for plaintiffs-appellees in the consolidated cases (all plaintiffs-appellees were and are represented in this Honorable Court by Linley Pearson, Attorney General for the State of Indiana, by Thaddeus Perry, Deputy Attorney General) filed a Verified Petition for Transfer, of Case(s) to the Supreme Court of Indiana Apparently, the filing of said Petition(s) to Transfer automatically divests this Honorable Court of any jurisdiction over the subject litigation. Accordingly, this Honorable Court could not consider Movants' pending Motion for Stay (Modification), pending resolution of the Petition(s) to Transfer by the Honorable Supreme Court.

6. On July 17, 1984, the Honorable Supreme Court of the State of Indiana issued an Order denying plaintiff-appellees' Petition(s) for Transfer and remanding the causes to this Honorable Court for all purposes. The Honorable Supreme Court did not decide the Motion for Stay (Modification) which was before it during the pendency of the Petition(s) to Transfer, but instead, in its Order of July 17, 1984 denying the Petition(s) to Transfer, remanded it to this Honorable Court for decision.

7. As of the date of the instant motion, Movants' Motion for Stay (Modification) has not been decided. The affected bookstores and theaters have been closed for all purposes for nearly six months. Tens of thousands of unlitigated books, films and magazines have been seized and withheld from the public. Movants have suffered obvious business losses and are now facing loss of governmental licenses as a consequence of being closed (See, letter from Fort Wayne—Allen County Board of Public

Health, attached hereto as Exhibit A). Additionally, the First Amendment rights of both Movants and the public have been totally curtailed at the subject locations during this nearly six month period of *forced, ex parte,* (and presumably) *interim,* closure.

8. As of the date of the instant motion, plaintiff-appellees' have filed *no* opposition to Movants' Motion for Stay (Modification). The sole pleadings filed to date by plaintiff-appellees are the aforesaid Verified Petitions for Transfer [which addressed the merits of neither the Motion for Stay (Modification) nor the underlying interlocutory appeal] and a Brief of Appellees in conjunction with the appeal.

9. The said Brief of Appellees (filed in this Honorable Court on or about July 19, 1984) is silent with respect to Movants' Motion for Stay (Modification). It neither opposes the said motion nor discusses it an any other way. The brief (it is only four pages) Brief forthrightly states that

> "[T]he facts herein are almost identical with those of *4447 Corporation et al v. Goldsmith,* the other case with which this case has been consolidated." Brief of Appellees State of Indiana and Stephen Sims, page 2.

The Brief discusses two factual distinctions between Movants' case and the earlier case with which it has been consolidated, but concludes that

> " . . . these two consolidated cases are essentially the same . . . " *Ibid,* page 3.

Based on the stated essential similarity to the earlier filed consolidated case, appellees herein

> " . . . incorporate[d] by referenced those portions of the Brief . . . in *4447 Corporation v. Goldsmith,* filed

> in this Court on January 18, 1984, under Cause No. 1283A415 (sic) . . . . " *Ibid* page 3.

Thus, for all practical purposes, appellees have treated the two cases as legally identical, and, in fact, they are. The incorporated *Goldsmith* Brief neither opposed nor otherwise discussed the stay sought (and later granted) in that case.

10. The sole additional discussion in appellees' Brief herein focuses on their erroneous characterization of the subject of a recent Ninth Circuit decision, *J-R Distributors v. Eikenberry,* 725 F.2d 482 (9th Cir. 1984) as a

> " . . . nuisance abatement statute aimed at forestalling the repetition of objectionable conduct (i.e. dissemination of obscenity)." *Ibid* at page 3.

In fact, although the statute therein at issue was denominated a "moral nuisance" law, no injunctive provisions were either present or considered. The Court held unconstitutional a civil fine provision

> " . . . which is premised in part on profits 'attributable to the moral nuisance' [and which] may be based on profits from the *sale of protected materials* in a place that is a moral nuisance solely because obscene materials were also sold or exhibited there . . . . [The Court held] that it is impermissible in an anti-obscenity statute, to provide that the amount of a fine shall be based, even in part, on the proceeds from constitutuionally protected material." 725 F.2d at 494.

The Court's holding is, of course, apposite to the case at bar in that the enunciated constitutional doctrine bars the forfeiture of constitutionally protected materials or proceeds or assets derived from the sale of constitutionally protected materials regardless of the prior sale of unpro-

tected materials at the same or a related location. Appellees' entire premise in the case at bar is that all materials, items and assets used at a location at which two disseminations of obscene materials have occurred may be forfeited under the Indiana Civil RICO statute, along with the proceeds from *all* materials sold there. The Ninth Circuit's opinion in *J-R Distributors v. Eikenberry* specifically rejects appellees' theory as unconstitutional. Rehearing *en banc* in *J-R Distributors v. Eikenberry* was denied unanimously by the Ninth Circuit on July 5, 1984.

11. Given the failure of appellees herein to offer any opposition to Movants' Motion for Stay (Modification) in the nearly sixth months which have elapsed since its filing date, the finality of this Honorable Court's Order of February 6, 1984 granting a similar Motion for Stay in conjunction with the *4447 Corporation* matter (see paragraph 4, *supra*), and the conceded similarity of Movants' case and the *4447 Corporation* case, it is respectfully submitted that that Movants' pending Motion for Stay (Modification) should be decided expeditiously and granted.

12. Movants and their counsel well recognize the tremendous burdens facing this Honorable Court and other appellate courts in this the most litigious period in the history of our society. We recognize that the competing and frequently strident demands on the judiciary may frequently be nearly overwhelming. Nonetheless, given this Honorable Court's previously issued stay order, the long period of time which has elapsed since Movants' Motion for Stay (Modification) was filed, the irreparable injury suffered since March of 1984 by Movants' and the ongoing and severe harm to transcendent First Amendment concerns, we respectfully take this extraordinary step to re-

quest that this Honorable Court issue its Order modifying the Order of the Court below without further delay.

13. Counsel is, of course, available on short notice to participate in oral argument if such would be of assistance to this Honorable Court. To the extent that prior argument in conjunction with the previously issued Stay is deemed sufficient, then such would respectfully appear to substantiate the validity of Movants' request for the expeditious issuing of an Order granting their Motion for Stay (Modification) herein.

Respectfully submitted,

JOHN H. WESTON
DAVID M. BROWN
BROWN, WESTON & SARNO
433 North Camden Drive,
Suite 900
Beverly Hills, California 90210
Telephone: (213) 550-7460

and

KENNETH R. SCHEIBENBERGER
LEBAMOFF LAW OFFICES
918 South Calhoun Street
Fort Wayne, Indiana 46802
Telephone: (219) 423-2581

and

STEPHEN M. TAYLOR
TAYLOR & RUBIN, P.C.
3000 Town Center, Suite 3131
South Field, Michigan 48075
Telephone: (313) 358-3590

and

FRANKLIN I. MIROFF
ANCEL, MIROFF & FRANK
Market Square Center, Suite 1035
151 North Delaware
Indianapolis, IN 46204
Telephone: (317) 634-1245

By /s/ Franklin I. Miroff
Attorneys for Appellants

(Exhibit and Certificate of Service omitted in printing.)

IN THE
COURT OF APPEALS OF INDIANA

No. 4-1283-A-415

(Title omitted in printing.)

RESPONSE TO REQUEST FOR EXPEDITIOUS RULING ON MOTION FOR STAY

Come now the Appellees, State of Indiana and Stephen M. Sims, by their counsel, Linley E. Pearson, Attorney General of Indiana, by his Deputy, Arthur Thaddeus Perry, and in response to Appellants' Request for Expeditious Ruling on Motion for Stay, states as follows:

1. This case is already fully briefed.

2. Since one of the conditions for a stay is likelihood of success on the merits, the Court would have to consider the merits in any event.

3. Judicial efficiency would best be served, therefore, by proceeding to the case itself.

4. Appellees' Brief makes clear that Appellants cannot prevail on the merits of this case.

5. A stay should therefore be denied.

Respectfully submitted,

LINLEY E. PEARSON
Attorney General of Indiana

By: /s/ Arthur Thaddeus Perry
Deputy Attorney General

Attorneys for Appellees

(Certificate of Service omitted in printing.)

IN THE
COURT OF APPEALS OF INDIANA
FOURTH DISTRICT

FORT WAYNE BOOKS, INC., CINEMA BLUE OF FORT WAYNE, INC., and EROTICA HOUSE BOOK-STORE, INC.,	)	
Appellants,	)	CAUSE NO. 4-1283-A-415
vs.	)	
STATE OF INDIANA and STEPHEN M. SIMS, Prosecuting Attorney for the THIRTY EIGHTH JUDICIAL CIRCUIT,	)	(Filed April 4, 1985)
Appellees.	)	

ORDER

The Appellants, having heretofore filed herein their Motion for Stay (Modification) of Interlocutory Injunction Without Bond Pending Appeal; and thereafter, this case and another case known as 4447 Corporation, et al. v. Stephen Goldsmith, et al., which presented common questions of law were consolidated; and a stay in the 4447 Corporation similar to the stay requested in this case was granted; and thereafter the Appellees filed a Verified Petition for Transfer of the consolidated cases to the Supreme Court of Indiana, where the consolidated cases pended until the Supreme Court denied the appellees' Petition for Transfer and remanded the consolidated cases to this

Court; as a result of the denial of transfer, the stay in the 4447 Corporation case remains in effect pending the appeal or the further order of this Court; thereafter the Appellants renewed their previously filed Motion for Stay, and now the Court, being duly advised, taking judicial notice of its own records in this case and particularly of the Order of Stay heretofore issued in the 4447 Corporation case, now finds that the Appellants' Motion for Stay in the above-captioned case should be granted, Conover, J., dissenting.

IT IS THEREFORE ORDERED that the Order heretofore entered by the Allen Circuit Court, the Honorable Thomas L. Ryan, Judge, presiding, in Cause Number CC84-446 of said Court, dated March 19, 1984, is hereby modified and ordered to conform with the stay heretofore made and entered in the 4447 Corporation case, pending the further order of this Court, in the following respects:

A. That the Sheriff of Allen County and/or the Fort Wayne Police Department shall forthwith unlock, unseal and release all property within the commercial building at 227 Pearl Street, Fort Wayne, Allen County, Indiana, 2441 Broadway, Fort Wayne, Allen County Indiana and 930 Broadway, Fort Wayne, Allen County Indiana, which property had heretofore been locked, sealed and secured pursuant to the Order of the Allen County Circuit Court, filed March 19, 1984 and in accordance therewith, shall forthwith return all the personal property removed from the above-specified commercial buildings on March 30, 1984, as more fully set out in the inventory filed with the Allen Circuit Court on April 4, 1984; and

B. Defendants shall preserve all property at 227 Pearl Street, Fort Wayne, Allen County, Indiana, 2441 Broadway, Fort Wayne, Allen County, Indiana and 930 Broadway, Fort Wayne, Allen County, Indiana, until further order of this Court; defendants shall not transfer or remove from said building any fixtures, cabinets, cameras, audio or video equipment, cash registers or other property until further order of this court. This paragraph shall not prevent defendants at 227 Pearl Street, Fort Wayne, Allen County, 2441 Broadway, Fort Wayne, Allen County, Indiana and 930 Broadway, Fort Wayne, Allen County, Indiana from exhibiting, transferring or selling books, magazines, newspapers, motion picture films or videotapes. However, until further order of this court, all other property shall be held by the defendants.

A written opinion on the merits of the appeal will imminently follow this order.

ORDERED this 4th day of April, 1985.

/s/ Paul H. Buchanan, Jr.
CHIEF JUDGE

INDIANA COURT OF APPEALS

Cause No. 4-1283-A-415

Opinion, *4447 Corporation, et al. v. Goldsmith*
(Printed as Appendix C to
Certiorari Petition, Cert. App. 28-98.)

INDIANA SUPREME COURT
Cause No. 29S04-8703-CV-270

Opinion, *4447 Corporation, et al. v. Goldsmith*
(Printed as Appendix A to
Certiorari Petition, Cert. App. 1-19.)

Denial of Rehearing, *4447 Corporation, et al. v. Goldsmith*
(Printed as Appendix E to
Certiorari Petition, Cert. App. 105-112.)

GOLDSMITH v. 4447 CORPORATION, et al.

RELEVANT DOCKET ENTRIES

Date of Filing	MARION CIRCUIT COURT
8/ 1/83	[Complaint] Comes now the plaintiff and files verified petition for seizure of property subject to forfeiture.
	[Court upon *ex parte* hearing issues] findings of fact and order [for seizure of property].
8/ 4/83	Come now defendants by counsel and file motion to dismiss, memo of law in support of motion to dismiss, motion to strike and/or expunge *ex parte* order of seizure, . . . motion to continue, motion for change of venue.
	Comes now plaintiff and files verified petition for seizure of property subject to forfeiture. Motion for change of venue granted.
8/18/83	Venue to Hamilton County.
	HAMILTON CIRCUIT COURT
9/ 8/83	Comes now the Plaintiff, by counsel, and files Amended Complaint.
9/12/83	Come now defendants, 4447 Corporation, et al., and file Motion To Vacate Order Filed August 1, 1983 and Memorandum Of Law In Support Of Motion.
9/13/83	Comes now the Defendant, 4447 Corporation, and files Motion To Continue [Deposition].
9/29/83	Motion to Modify Order filed August 1, 1983 Pending Disposition of Motion To Vacate.
10/ 5/83	Comes now plaintiff by counsel, and files its Motion for Continuance of hearing [of Defendants' Motion To Vacate Seizure Order].

10/ 7/83	Plaintiff's Motion for Continuance granted.
10/25/83	Comes now the defendant, 4266 W. 38th Street, Corporation, by counsel, and files its Renewed Motion To Modify Order Filed August 1, 1983, Objection To Continuance Of Hearing Date And Opposition To Motion To Strike.
10/28/83	Comes now the plaintiff, by counsel, and files Memorandum Of Law In Opposition To Motion To Dismiss And To Motion To Vacate Court's [Seizure] Order.
11/15/83	Defendant's Reply Memorandum in Support of Motion To Dismiss Complaint And Motion to Vacate [Seizure] Order.
11/21/83	Court having taken under advisement matters in November 18, 1983 hearing now enters Order [denying motions to dismiss and to vacate seizure order].
12/ 1/83	Comes now the defendant, Burke H. Mendenhall, by counsel, and files his Trial Rule 12(B)(6) and 12(E) Motion to Dismiss Complaint.
12/ 5/83	Motion for Stay Pending Appeal filed by Corporate Defendants and Burton Gorelick, is hereby denied.
12/15/83	Motion to Dismiss
2/ 3/84	Court of Appeals decision filed [granting stay of seizure pending appeal].
8/20/84	Come now defendants, by counsel, and file Jury Demand.
8/22/84	Defendants' Demand for Trial by Jury is hereby denied.
8/29/84	Plaintiff by counsel files Answer of Defendant Burke H. Mendenhall and Mendenhall's Motion for Separate Trial.
9/14/84	Comes now the plaintiff, and files Answer In Opposition To Motion For Separate Trial.

9/24/84 Motion for Separate Trials filed by Defendant, B. Mendenhall, is denied.

1/30/85 Come now 4447 Corporation, World Video Systems, ISSI Theatre Corporation, Plaza Entertainment Center and Burton Gorelick, by counsel and file Motion to Vacate Trial Setting and to Defer Further Proceedings Pending Finality of Interlocutory Appeal.

2/ 7/85 Defendant's Motion to Vacate Trial Setting and to Defer further proceedings is hereby denied.

2/25/85 Comes now the Court of Appeals and issues the enclosed order [for stay of proceedings pending appeal].

2/26/85 Motion for Continuance granted as per Order. Cause to be reset at a later date when Stay Ordered by Indiana Court of Appeals is lifted.

[6/12/85] [Opinion of Court of Appeals filed.]

3/ 3/87 Opinion from [Indiana] Supreme Court filed.

IN THE CIRCUIT COURT OF MARION COUNTY
CAUSE NO. C83 1788

STATE OF INDIANA)
) ss.
COUNTY OF MARION)

STEPHEN GOLDSMITH, PROSECUTING ATTORNEY FOR NINETEENTH JUDICIAL CIRCUIT,

Plaintiff,

vs.

4447 CORPORATION, WORLD VIDEO SYSTEMS, INC. ISSI THEATRE INC., BURTON GORELICK d/b/a ADULT TOY AND GIFT, DISK DEVELOPMENT, BURKE MENDENHALL, IVAN CHALFIE, HENRY KAHN, BARBARA BYRNES, HERBERT ALLEN, JAMES LEWELLYN, ROGER SUMMERS, EUGENE YARMY, GEORGIA MYERS, HERB TROUT, PLAZA ENTERTAINMENT CENTER, CYNTHIA SMITH, LAURIE JACOBS, WILLIAM E. LONG, ROBERT BEAMAN,

Defendants,

(Filed CC Aug. 1, 1983)

Bernard J. Gohmann, Jr., Clerk

COMPLAINT

1. Stephen Goldsmith, as Prosecuting Attorney for the Nineteenth Judicial Circuit of Indiana, brings this civil action for injunctive and other relief, under the Indiana Racketeer Influence and Corrupt Organization Statute ("R.I.C.O" Action) 35-45-30.5-1, et. seq. Indiana Code (1982), alleging as follows:

Jurisdiction

2. Jurisdiction of this matter is conferred upon this Court by I. C. 34-4-30.5-2.

Statutory Authority

3. The statutory authority relied upon by Plaintiff in this case is the Racketeer Influenced and Corrupt Organizations Act (R.I.C.O.) I. C. 35-45-6-1 - 35-45-6-2, Indiana Code, 1982 and Civil Procedure Code Special Proceedings Civil Remedies for Racketerring Activity I.C. 34-4-30.5-1 - 34-4.30.5-6.

Parties

4. Plaintiff, Stephen Goldsmith, is the duly elected Prosecuting Attorney for the Nineteenth Judicial Circuit of Indiana. The Prosecuting Attorney is authorized to bring this action by I. C. 34-4-30.5-2.

5. The defendants, 4447 Corporation d/b/a World Video Systems, Inc., is a retail video store located at 4447 North Keystone Avenue, Indianapolis, Marion County, Indiana. The defendant, 4447 Corporation, is an Indiana Corporation and said corporation was incorporated on April 22, 1983.

6. The defendant, World Video Systems, Inc. is an Indiana Corporation located at 680[illegible] East 38th Street, Indianapolis, Marion County, Indiana.

7. The defendant, I.S.S.I. Theatre, Inc. d/b/a Adult Toy and Gift, is a retail video store and bookstore located at 6755 East 38th Street, Indianapolis, Marion County, Indiana. The defendant, I.S.S.I. Theatre, Inc. is a Delaware corporation, and said corporation was admitted to do business in the State of Indiana on June 5, 1978.

8. The defendant, 4447 Corporation, d/b/a World Video Systems, Inc. operates at 4447 North Keystone Avenue in Marion County, Indiana and I.S.S.I. Theatre, Inc. d/b/a Adult Toy and Gift at 6755 East 38th Street in Marion County, Indiana, for the purpose of selling, distributing or showing or offering to sell, distribute or show, or have in its possession, custody or control with intent to sell, distribute, show or advertise in any manner, obscene, lewd, lascivious, filthy, indecent, sadistic or masochistic books, magazines, periodicals, newspapers, photographs, motion picture films, or articles or instruments of indecent use or purpose; Said corporations knowingly write, print, publish or utter, or cause to be written, printed, published, or uttered, advertisements or notices of various kinds, giving information, directly or indirectly, stating or purporting to state, where or whom, or by what means any,

or what purports to be any, such material, matter, article, or thing of any such character, can be purchased, obtained, or had. Said corporations in any manner knowingly hires, employs, uses or permits any person to do or assist in doing, either knowingly or innocently, any act or thing mentioned above.

9. The defendants, Ivan M. Chalfie and Henry Kahn d/b/a Disk Development Company, are a real estate firm located at 9566 Allisonville Road, Indianapolis, Marion County, Indiana. The defendant, Disk Development Company, owns the real estate at 4447 North Keystone, the location of the defendant, 4447 Corporation d/b/a World Video Systems, Inc. retail video store.

10. The defendant, Burton Gorelick, is a resident of the State of Michigan. The defendant, Burton Gorelick, is the real property owner of the lots at 6755 E. 38th Street, Indianapolis, Marion County, Indiana, the location of defendant, I.S.S.I. Theatre, Inc. d/b/a Adult Toy and Gift.

11. The defendant, Burke Mendenhall, is a resident of the State of Indiana. The defendant, Burke Mendenhall is the real property owner of 4276 W. 28th Street, the location of defendant, Plaza Entertainment Center.

12. The defendants, Cynthia Smith, Laurie Jacobs, William E. Long and Robert Beaman, are all residents of the State of Indiana. All of the defendants named above were, at all times relevant herein, either employed by or associated with an enterprise, and all of the above-named defendants did conduct or participate directly or indirectly , in such enterprise through a pattern of racketeering activity as is more fully set forth herein.

The Burton Gorelick Enterprise

13. Plaintiff, Stephen Goldsmith, Prosecuting Attorney for the Nineteenth Judicial Circuit of Indiana, brings this lawsuit pursuant to I. C. 34-4-30.5, alleging that Burton Gorelick and all of the individual and corporate defendants named above did form an illegal enterprise, consisting of all of the above-named persons, whose funtions in said enterprise include ownership, operation, management or employment by the corporations named herein.

14. The purpose of this enterprise is alleged to be, by Plaintiff, to operate in Marion County, Indiana "adult bookstores", which bookstores operate for the purpose of selling, distributing, or showing, or offering to sell, distribute or show, or have in its possession, custody or control with intent to sell, distribute, show or advertise in any manner, obscene, lewd, lascivious, filthy, indecent, sadistic, or masochistic books, magazines, periodicals, newspapers, photographs, motion picture films, or articles or instruments of indecent use or purpose.

15. Said enterprise knowingly writes, prints, publishes or utters or causes to be written, printed, published or uttered advertisements or notices, giving information directly or indirectly, stating, or purporting to state, where, how, or whom or by what means any or what purpose to be any, such material, matter, article, or thing of any such character can be purposed, obtained or had.

16. Said enterprise knowingly hires, employs, uses or permits persons to do or assist in doing either knowingly or innocently, acts in violation of I. C. 34-4-30.5-2 and I. C. 35-45-6-2(3).

17. In addition to the above, said enterprise, by and through its corporations, owners, managers, and employ-

ees, distributes obscene materials on a daily basis, knowing the obscene nature thereof, in that said enterprise, by and through its corporations, owners, managers, and employees, sells, exhibits, or otherwise disseminates to other persons, obscene material or said enterprise offers to do so on said enterprise possesses such material with intent to do so in violation of I. C. 34-4-30.5-2 and 35-45-6-2-(3).

Facts and R. I. C. O. Violations

18. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 14 above and further alleges and follows:

19. Beginning on or about June 5, 1978 and continuing up to, and including, August 1, 1983, and at diverse times and between said dates, all the above-named defendants were employed by or associated with, The Gorelick Enterprise, and all the above named defendants did conduct or participate, directly or indirectly, in said enterprise, through a pattern of racketeering activity as is more fully set forth below, to-with:

a. All of the above-named defendants did engage in at least two incidents of racketeering conduct in that each defendant did at least twice between said dates, knowingly sell, distribute or show or offer to sell, distribute or show, or have in its or his possession, custody or control with intent to sell, distribute, show or advertise in any manner, obscene, lewd, lascivious, filthy, indecent, sadistic, masochistic books, magazines, periodicals, newspapers, photographs, motion picture films, or articles or instruments of indecent use or purpose;

b. said defendants did knowingly, between the above-referenced dates, write, print, publish or utter, or cause to be written, printed, published or uttered, advertisements or notices, giving information which stated or purported to state, where, how, of whom, or by what means any, what purported to be any such material, matter, article, or thing of any such character could be purchased, obtained, or had;

c. said defendants did knowingly between the above-referenced dates, hire, employ, use or permit any person to do or assist in doing, either knowingly or innocently, the acts or things mentioned above with each separate incident set forth above being in violation of I. C. 35-30-10.1-2.

d. each separate incident set forth above constitutes a violation of I. C. 35-30-10.1-2, and any two such incidents set forth above in addition to any one of the incidents set forth previously constitutes violations of I. C. 35-45-6-2 (a)(3).

e. All of the above-named defendants did, between the above-referenced dates, own, operate, manage, maintain employment with, The Gorelick Enterprise, and more specifically, each of the above-named defendants were, and/or, are employed by, or associated with the Gorelick Enterprise, as defined and identified herein.

f. All of the above-named defendants did conduct or participate, directly or indirectly, in The Gorelick Enterprise as set forth above through a pattern of racketeering activity in violation of I. C. 35-45-6-2(a)(3) in that they engaged in two or more incidents of said racketeering conduct which had the same or similar intents, results,

accomplices, victims, methods or commission or other interrelated incidents of the same kind each.

g. Further, the defendants, 4447 Corporation d/b/a World Video Systems, Inc., I.S.S.I. Theatre Corp. d/b/a Adult Toy and Gift, and Burton Gorelick did, in violation of I. C. 35-30-10.1-1 and I. C. 35-30-10.1-2 and I. C.. 35-45-6-2(a)(3) in any manner, knowingly hire, employ, use or permit any person to do or assist in doing, either knowingly or innocently, any act or thing mentioned above, more specifically the defendants named in this paragraph did knowingly hire, employ, use or permit Barbara Byrnes, Herbert Allen, James Lewellyn, Roger Summers, Eugene Yarmy, Georgia Meyers, Herb Trout, Cindy Smith, Laurie Jacobs, William E. Long, Robert Beaman, and other persons whose identities are unknown to the plaintiff at this time to do or assist in doing, either knowingly or innocently, any act or thing mentioned above, with each such incident being in violation of I. C. 35-30-10.1-2. Any two such incidents set forth in this paragraph or with any one of such incidents set forth in this paragraph, in addition to any one of the incidents set forth in any other paragraph in this allegation, constitute violation of I. C. 35-45-6-2(a)(3).

Further, plaintiff alleges that all of the above acts or incidents did take place in Marion County, Indiana.

20. Based upon the above, and the information provided by the agents of the Indianapolis Police Department who have been conducting the investigation of The Gorelick Enterprise, plaintiff believes that The Gorlick Enterprise will continue to operate in violation of R.I.C.O. statutes, unless the below sought relief is granted.

WHEREFORE, because defendants have conducted or participated in an enterprise through a pattern of racketeering activity in violation of I. C. 35-45-6, and upon information and belief, will continue to engage in such activities unless substantial penalties are imposed by this Court, plaintiff respectfully requests that this Court grant the following relief:

1. Pursuant to I. C. 34-4-30.5(2) immediately enjoin defendants and their agents, employees, representatives or assigns from further violations of I. C. 35-45-6-2(a)(3) and I. C. 35-30-10.1-2.

2. Order defendants to immediately list and state the location of all property, real and personal, including money, that defendants own or have title to or any right, interest or equity in;

3. Immediately subject all personal and real properties, money, intangibles, and corporate interest and activities acquired or maintained in violation of the R.I.C.O. Act to Court supervision, and order defendants to refrain from disposing of, transferring, relocating, dissipating, or otherwise altering the status of said properties or corporate entities without prior approval of the Court.

4. Pursuant to I. C. 34-4-30.5-2(1) order all defendants to divest themselves of any interest in any and all enterprise, including real property.

5. Pursuant to I. C. 34-4-30.5-3(a) order forfeiture of all property and other things of value, real or personal, including money, used in the course of, intended for us in the course of, derived from or realized through conduct in violation of I. C. 35-45-6-2.

6. Pursuant to I. C. 34-4-30.5-2(4) order the suspension or revocation of a license, permit, or prior approval granted to defendants by any agency of the State.

7. Pursuant to I. C. 34-4-30.2(5) order the forfeiture of the charter of those defendant corporations organized under the laws of the State of Indiana or where appropriate, revocation of the certificates authorizing a foreign corporation to conduct business within the state.

8. Pursuant to I. C. 35-45-6 permanently enjoin defendants and their agents, employees, representatives or assigns from engaging in the activities described herein that are shown to violate I. C. 35-46-6 and I. C. 34-4-30.5.

9. Pursuant to I. C. 34-4-30.5-3 order institution or forfeiture proceedings for all property, real or personal, including money, used in the course of, derived from, or realized through, conduct in violation of I. C. 35-45-62(3).

Plaintiff asks that this Court immediately sequester and subject to Court supervision all bank accounts held by the individual and corporate defendants herein, and supervise the sale, transfer, or the dispositions of any real or personal properties by said defendants, and for all other just and proper relief in the premises.

/s/ J. Gregory Garrison
Deputy Prosecuting Attorney for the
Nineteenth Judicial Circuit

/s/ Philip R. Blowers
Deputy Prosecuting Attorney for the
Nineteenth Judicial Circuit

(Certificate of Service Omitted in Printing.)

IN THE CIRCUIT COURT OF MARION COUNTY

CAUSE NO. C83 1788

(Title omitted in printing)

(Filed CC Aug. 1, 1983)

Bernard J. Gohmann, Jr., Clerk

VERIFIED PETITION FOR SEIURE OF PROPERTY SUBJECT TO FORFEITURE

Comes now the plaintiff, in person and by counsel, and petitions the Court for seizure of property pursuant to statute, and in support of said petition would show the Court as follows:

1. He is the duly elected and serving Prosecutor for the Nineteenth Judicial Circuit, including Marion County, Indiana.

2. That he is the plaintiff in the above-entitled cause.

3. The plaintiff hereby incorporates by reference thereto, all of the allegations set forth in the Complaint of the plaintiff, as filed in this cause on the 1st day of August, 1983.

4. The plaintiff believes and has good cause to believe that the defendants, and each of them, by and through the corrupt enterprise defined and identified in the Complaint, possess, with intent to distribute, and in fact, distribute, various obscene materials as more completely identified in said Complaint. Said materials are obscene because and for the reason that they explicitly depict acts of sexual contact between members of the same and opposite sexes, including oral, anal and genital contact. Plain-

tiff believes and has good cause to believe that said materials are obscene as defined by the statutes of the State of Indiana for the reason that they are patently offensive, intended and calculated to appeal to a prurient interest, and are without significant literary, artistic, social, scientific or educational value. The plaintiff has extensive knowledge of a continuing and on-going investigation by agents for the Indianapolis Police Department of the racketeering activity described in the Complaint of the plaintiff. Evidence discovered in that investigation was a product of investigation by Detective Sgt. Thomas R. Rodgers, Detective Sgt. assigned to the Vice Branch, Indianapolis Police Department. The Affidavit of Sgt. Rodgers is attached hereto, made a part hereof, and marked as Plaintiff's Exhibit A.

5. The affidavit of Sgt. Rodgers, Exhibit A herein, establishes probable cause to believe that a violation of the Criminal Racketeering Influenced Criminal Organizations Statute, I. C. 35-45-6-2, has occurred, involving property located at 4276 West 38th Street, Indianapolis, Indiana. The defendant, 4447 Corporation, doing business as Plaza Entertainment Center, has constructed a facility in furtherance of the racketeering activity described in the Complaint of the plaintiff, at 4276 West 38th Street, doing business under the name and style of Plaza Entertainment Center. Said facility is constructed for the purposes of and calculated for the use in said racketeering activity, being the continued dissemination of obscene material. (Affidavit of Rodgers, Exhibit A). As of the date of the sig[illegible] of this petition, said facility has been prepared for o[illegible] and agents for the defendants have stated to [illegible]tive Rodgers by and through his investigators, that

sa'd facility shall be open for business August 1, 1983. The premises located at 4276 West 38th Street contain numerous and multiple items of an obscene nature, possessed by the defendants named in the above entitled action with the intent to distribute those in furtherance of their continuing criminal activity as identified in said Complaint. The possession of such articles as are described herein, including those described in the affidavit of Sgt. Rodgers, constitute a probable cause showing that a violation of the Racketeering Statutes as set forth herein have occurred and are continuing to occur.

Pursuant to I. C. 34-4-30.5-3 (b) the Court is required to issue an Order, upon such probable cause showing, ordering appropriate law enforcement agencies to seize the property contained in the location described above, 4276 W. 38th Street. The Court may either order seizure by requiring law enforcement agencies, the agency of Indianapolis Police Department, to take possession of all merchandise and materials found therein, or, as provided in 34-4-30.5-4(b)(1) by placing said property under seal.

WHEREFORE, the plaintiff prays that the Court will enter and issue an Order authorizing and directing the appropriate agencies for the Indianapolis Police Department to seize all property contained in and around the premises located at 4276 W. 38th Street, to place the same under seal, to cause the same to be locked, and to deny admittance to any person other than appropriate law enforcement personnel, to said premises pending further order of this Court.

The plaintiff further prays that the Court will award the expenses and costs of this action and such reasonable

attorney's fees as the Court may deem appropriate to the plaintiff, all pursuant to 34-4-30.5-2(6), and for all other just and proper relief in the premises.

/s/ Philip R. Blowers
Deputing Prosecuting Attorney
for the Nineteenth
Judicial Circuit
560 City County Building
Indianapolis, Indiana 46204
Telephone: 236-3522

VERIFICATION

I affirm under the penalties of perjury that the representations contained in the foregoing Verified Petition for Seizure of Property Subject to Forfeiture are true.

/s/ Philip R. Blowers
Philip R. Blowers, Deputy
Prosecuting Attorney for the
Nineteenth Judicial Circuit

PLAINTIFF'S EXHIBIT A
AFFIDAVIT

I, THOMAS R. ROGERS, believe or have reason to believe based upon personal knowledge and creditable hearsay information the following:

On July 25, 1983, I went into the Adult Toy and Gift Shop located at 6753 E. 38th Street. Upon entering, I could see that the business had for sale on display differenet types of sexually oriented material. Immediately within the store is a display of sexually explicit magazines, video tapes, eight millemeter films and sexual aid devices. I went to the 8 mm film section and a clerk by the name of William E. Long, Jr. unlocked the display cabinet and handed me the films that I had selected; two films that revealed sexual depictions on the cover that contained the film. I asked Long if the films inside were new and did they depict the same thing that was on the cover. He answered that they did and told me each film was $12.95 plus tax. I purchased both films, entitled "Anal Madness" and "Spin the Bottle". A review of the two films revealed that bot. films depicted men and women in sexual intercourse and deviate sexual conduct. I then went to the "live peep" section within the store and entered a "conversation booth". Then I picked up the telephone a spoke to a female identified as "Shawn". Shawn directed me to put some money in the coin operated device that operated the lights. I did so and the lights came on her side of the booth. Shawn, advised me for a tip she would get naked for me. I gave her a tip and she took off all of her clothing and layed on the floor of the booth spreading her legs and genitals apart with her fingers, exposing her private

parts and anus She began to masterbate and continued to do so until the time ran out on the coin device that operated the lights.

I then went to World Video located at 4447 N. Keystone and upon entering, I could see that they had for sale many X-rated video tapes and 8 mm films. I spoke to a clerk by the name of Lori Jacobs in regards to a video tape entitled "Hot Summer Night" that was on display for $79.95. I asked her if that was the price and she said I could probably get it cheaper if I would talk to the manager. I asked about the "8 mm" films that were on display behind the counter. I selected two films entitled "Afternoon Delight" and "Sexual Negotiations" and asked Jacobs if the films depicted the same thing that was depicted on the cover of the film. The cover featured men and women engaged in explicit sexual conduct. I was advised by Jacobs that the price of the film was $10.95 plus tax. I was about to pay for them when another female by the name of Cynthia Smith came from the back room and I asked if she was the manager. She said she was and I asked her about discounting the video tape entitled "Hot Summer Night". She said that I probably wouldn't like that film because she saw it and said "it was pretty rough." She liked things a little more gentle. She then told me that I could have it for $40.60. I then paid for the two 8 mm films and left to go call for a uniformed police officer to identify the two women I had just talked to. Officer John Ferguson arrived and went in to talk to Lori Jacobs and Cynthia Smith. Smith told Officer Ferguson that she was opening a new store at 38th and Lafayette Road and named the number of movie booths the new store was going to have, and other features of the store.

A review of the two films I purchased from the "World Video" revealed that both films depicted men and women engaged in sexual intercourse and deviate sexual conduct.

On July 26, 1983 I went back to the "Adult Toy and Gift Shop" located at 6753 E. 38th Street and purchased two more films entitled "Big Load" and "Gyro Sex". This time the purchase was made from a Robert Beaman. A review of the films revealed that both films depicted men and women engaged in sexual intercourse and deviate sexual conduct. On this same day, Detective Steve Verplank went to the "World Video" and purchased the video tape entitled "Hot Summer Night". A review of this tape found that it depicted four men forcing a young female to perform oral sex, sexual intercourse and beating the woman with a belt. This officer has retained possession of all materials as stated in the incidents above. Said materials are attached here as exhibits hereto in sealed paper containers. Containers denominated Exhibits A, B, C and D.

On July 29, 1983, Detective Joseph Brannon went into the Plaza Entertainment Center, located at 4276 W. 38th Street. The business appeared to be open. However, when Detective Brannon entered the business he could see that there were several construction workers working on the building. He told me that there were magazines, films and other sexually oriented materials for sale.. He asked a worker if they were open yet, and the worker said not until Monday, implying August 1, 1983. The worker then showed Detective Brannon the "live peep" section within the store, and the mini theatre section within the

store. The worker told Brannon that the theatre section was not completed, but was expected to be finished by December.

This affiant has conducted numerous investigations into businesses of this nature and I have reasonable belief that Adult Toy and Gift Shop and World Video are owned and operated by an enterprise consisting of various corporations and individuals named in the Complaint attached hereto (specifically rhetorical paragraphs 5 through 17) in a manner violative of I. C. 35-30-10.1-2 and the provisions of the Indiana R.I.C.O. Act. This affiant has personally seen various papers, records, applications and other documents concerning both World Video and Adult Toy and Gift that would support this belief and this, together with statements made to this officer and other officers of the Indianapolis Police Department, would lead this affiant to believe that Plaza Entertainment Center is a part of the enterprise that operates Adult Toy and Gift and World Video adult bookstores, under common ownership or control.

All of the events described above occurred in Marion County, Indiana.

/s/ Thomas R. Rodgers
Detective Sgt.,
Indianapolis Police Department

Subscribed and sworn to before me this 1 day of August, 1983.

/s/ D. J. Daniels
Deputy Prosecuting Attorney
Nineteenth Judicial Circuit

(Certifice of Service omitted in printing.)

IN THE MARION COUNTY CIRCUIT COURT
CAUSE NO. C83-1788

(Title omitted in printing.)

FILED

AUG 4 1983

/s/ Bernard J. Gohmann, Jr.
Clerk

MOTION TO CONTINUE

Comes now the Defendant 4447 Corporation, and moves the Court to continue as follows:

1. That the matter is set for hearing on August 4, 1983.

2. That there has been only seventy-two (72) hours notice in order to prepare.

3. That there are substantial constitutional issues involved, including, but not limited to the First Amendment, the Fourteenth Amendment, due process provisions as well as State constitutional issues.

4. That in order properly brief and request the appropriate relief it will be ..ecessary to present to the Court appropriate citations, briefs and authority for each of the issues involved.

5. That this Court has already taken *drastic* measures in issuing a preliminary injunction without a hearing, *ex parte*, without notice; such action being subject to review and briefing as well.

WHEREFORE, Defendant prays for an Order from this Court continuing this matter and for all other just and proper relief in the premises.

Respectfully submitted,

TAYLOR & RUBIN, P.C.
By /s/ Stephen M. Taylor

(Certificate of Service omitted in printing.)

IN THE CIRCUIT COURT OF MARION COUNTY
CAUSE NO. C83-346

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

(Title omitted in printing.)

FILED
SEP 8 1983

/s/ Helen Porter
Clerk Hamilton Circuit Court

AMENDED COMPLAINT

1. Stephen Goldsmith, as Prosecuting Attorney for the Nineteenth Judicial Circuit of Indiana, brings this civil action for injunctive and other relief, under the Indiana Racketeer Influenced and Corrupt Organization statute ("R.I.C.O. Action) 34-4-30.5-1 et seq. Indiana Code (1982) alleging as follows:

Jurisdiction

2. Jurisdiction of this matter is conferred upon this Court by I. C. 34-4-30.5-2 and 3.

Statutory Authority

3. The statutory authority relied upon by Plaintiff in this case is the Racketeer Influenced and Corrupt Organizations Act (R.I.C.O.) I.C. 35-45-6-1 - 35-45-6-2, Indiana Code, 1982 and Civil Procedure Code Special Proceedings Civil Remedies for Racketeering Activity I.C. 34-4-30.5-1 - 34-4-30.5-6.

Parties

Plaintiff, Stephen Goldsmith, is the duly elected Prosecuting Attorney for the Nineteenth Judicial Circuit of Indiana. The Prosecuting Attorney is authorized to bring this action by I.C. 34-4-30.5-2.

4. The defendants, 4447 Corporation d/b/a World Video Systems, Inc., is a retail video store located at 4447 North Keystone Avenue, Indianapolis, Marion County, Indiana. The defendant, 4447 Corporation, is an Indiana corporation and said corporation was incorporated on April 22, 1983.

5. The defendant, World Video Systems, Inc., is an Indiana corporation located at 6801 East 38th Street, Indianapolis, Marion County, Indiana.

6. The defendant I.S.S.I. Theatre, Inc. d/b/a Adult Toy and Gift, is a retail video store and bookstore located at 6755 East 38th Street, Indianapolis, Marion County, Indiana. The defendant, I.S.S.I. Theatre, Inc. is a Deleware corporation, and said corporation was admitted to do business in the State of Indiana on June 5, 1978.

7. The defendants, Ivan M. Chalfie and Henry Kahn d/b/a Disk Development Company, are a real estate firm located at 9566 Allisonville Road, Indianapolis, Marion County, Indiana. The defendant, Disk Development Company, owns the real estate at 4447 North Keystone, the location of the defendant, 4447 Corporation d/b/a World Video Systems, Inc. retail video store.

8. The defendant, Burton Gorelick, is a resident of the State of Michigan. The defendant, Burton Gorelick, is the real property owner of the lots at 6755 E. 38th Street,

Indianapolis, Marion County, Indiana, the location of the defendant, I.S.S.I. Theatre, Inc. d/b/a Adult Toy and Gift.

9. The defendant, Burke Mendenhall, is a resident of the State of Indiana. The defendant, Burke Mendenhall is the real property owner of 4276 W. 38th Street, the location of the defendant, Plaza Entertainment Center.

10. The defendants, Cynthia Smith, Laurie Jacobs, William E. Long and Robert Beaman, are all residents of the State of Indiana. All of these defendants, at all times relevant herein, were either employed by or associated with an enterprise in Marion County, and all of the above-named defendants have conducted or participated directly or indirectly, in such enterprise through a pattern of racketeering activity as is more fully set forth herein.

The Burton Gorelick Enterprise

11. Plaintiff, Stephen Goldsmith, Prosecuting Attorney for the Nineteenth Judicial Circuit of Indiana, brings this lawsuit pursuant to I.C. 34-4-30.5, alleging that Burton Gorelick and all of the individual and corporate defendants named above did form an illegal enterprise, consisting of the above-named persons, whose function in said enterprise have included ownership, operation, management or employment by the corporations named herein, for the purpose of economic gain, through said racketeering activity.

12. The purpose of this enterprise is to operate, in Marion County, Indiana, "adult bookstores," which bookstores operate for the purpose of selling, distributing, or showing or offering to sell, distribute or show, or have

in its possession, custody or control with intent to sell, distribute, show or advertise in any manner, obscene, lewd, lascivious, filthy, indecent, sadistic, or masochistic books, magazines, periodicals, newspapers, photographs, motion picture films, or articles or instruments of indecent use or purpose.

13. Said enterprise knowingly writes, prints, publishes or utters or causes to be written, printed, published or uttered advertisements or notices, giving information, directly or indirectly, stating, or purporting to state, where, how, or whom or by what means any or what purpose to be any, such material, matter, article, or t z of any such character can be purchased, obtained or had.

14. Said enterprise knowingly hires, employs, uses or permits persons to do or assist in doing either knowingly or innocently, acts in violation of I.C. 34-4-30.5-2 and I.C 35-45-6-2(3).

15. In addition to the above, said enterprise, by and through its corporations, owners, managers, and employees, distributes obscene materials on a daily basis, knowing the obscene nature thereof, in that said enterprise, by and through its corporations, owners, managers, and employees, sells, exhibits, or otherwise disseminates to other persons, obscene material or said enterprise offers to do so or said enterprise possesses such material with intent to do so in violation of I.C. 34-4-30.5-2 and 35-45-6-2(3).

Facts and R.I.C.O. Violations

16. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 15 above and further alleges as follows:

17. Beginning on or about June 5, 1978 and continuing up to, and including, August 1, 1983, and at diverse times and between said dates, all the above-named defendants were employed by or associated with, the Gorelick Enterprise, and all of the above named defendants did conduct or participate, directly or indirectly, in said enterprise, through a pattern of racketeering activity as is more fully set forth below, to-wit:

a. All of the above-named defendants, as participants in the enterprise, did engage in at least two incidents of racketeering conduct in that each defendant did at least twice between said dates, knowingly sell, distribute or show or offer to sell, distribute or show, or have in its or his possession, custody or control with intent to sell, distribute, show or advertise in any manner, obscene, lewd, lascivious, filthy, indecent, sadistic, masochistic books, magazines, periodicals, newspapers, photographs, motion picture films, or articles or instruments of indecent use or purpose;

b. Said defendants did knowingly, as participants in the enterprise, between the above-referenced dates, write, print, publish or utter, or cause to be written, printed, published or uttered, advertisements or notices, giving information which stated or purported to state, where, how, of whom, or by what means any, what purported to be any such material, matter, article, or thing of any such character could be purchased, obtained, or had;

c. Said defendants did knowingly, as participants in the enterprise, between the above referenced dates hire, employ, use or permit any person to do or assist in doing, either knowingly or innocently, the acts or things men-

tioned above with each separate incident set forth above being in violation of I.C. 35-30-10.1-2.

d. Each separate incident set forth above constitutes a violation of I.C. 35-30-10.1-2, and any two such incidents set forth above in addition to any one of the incidents set forth previously constitutes violations of I.C. 35-45-6-2 (a)(3).

e. All of the above-named defendants did, between the above-referenced dates, own, operate, manage, maintain employment with, the Gorelick Enterprise, and more specifically, each of the above-named defendants were, and/or, are employed by, or associated with the Gorelick Enterprise, as defined and identified herein.

f. All of the above-named defendants did conduct or participate, directly or indirectly, the the Gorelick Enterprise as set forth above through a pattern of racketeering activity in violation of I.C. 35-45-6-2(a)(3) in that they engaged in two or more incidents of said racketeering conduct which had the same or similar intents, results, accomplices, victims, methods or commission or other interrelated incidents of the same kind each.

g. Further, the defendants, 4447 Corporation d/b/a World Video Systems, Inc., I.S.S.I. Theatre Corp. d/b/a Adult Toy and Gift, and Burton Gorelick did, in violation of I.C. 35-30-10.1-1 and I.C. 35-30-10.1 and I.C. 35-45-6-2 (a)(3), knowingly hire, employ, use or permit persons to do or assist in doing, either knowingly or innocently any act or thing mentioned above, more specifically the defendants named in this paragraph did knowingly hire, employ, use or permit Barbara Byrnes, Herbert Allen, James

Lewellyn, Roger Summers, Eugene Yarmy, Georgia Meyers, Herb Trout, Cindy Smith, Laurie Jacobs, William E. Long, Robert Beaman, and other persons whose identities are unknown to the plaintiff at this time, to do and assist in doing, either knowingly or innocently, acts mentioned above, with each such incident being in violation of I.C. 35-30-10.1-2. Any two such incidents set forth in this paragraph, in addition to any one of the incidents set forth in any other paragraph in this allegation, constitute violation of I.C. 35-45-6-2(a)(3).

18. Based upon the above, and information provided by the agents of the Indianapolis Police Department who have been conducting the investigation of The Gorelick Enterprise, plaintiff believes that The Gorelick Enterprise will continue to operate in violation of R.I.C.O. statutes, unless the below sought relief is granted.

WHEREFORE, the plaintiff prays for judgment against the defendants, and each of them, as follows:

1. Order defendants to immediately list and state the location of all property, real and personal, including money that defendants own or have title to or any right, interest or equity in;

2. Subject all personal and real properties, money, intangibles, and corporate interest and activities acquired or maintained in violation of the R.I.C.O. Act to Court supervision, and order defendants to refrain from disposing of, transferring, relocating, dissipating, or otherwise altering the status of said properties or corporate entities without prior approval of the Court.

3. Pursuant to I.C. 34-4-30.5-2(1) order all defendants to divest themselves of any interest in any and all enterprise, including real property.

4. Pursuant to I.C. 34-4-30.5-3(a) order forfeiture of all property and other things of value, real or personal, tangible and intangible, including money, used in the course of, intended for use in the course of, derived from or realized through conduct in violation of I.C. 35-45-6-2.

5. Pursuant to I.C. 34-4-30.5-2(4) order the suspension of a license, permit, or prior approval granted to defendants by any agency of the State.

6. Pursuant to I.C. 34-4-30.5-2(5) order the forfeiture of the charter of those defendant corporations organized under the laws of the State of Indiana or where appropriate, revocation of the certificates authorizing foreign corporations to conduct business within the state.

Plaintiff asks that this Court sequester and subject to Court supervision all bank accounts held by the individual and corporate defendants herein, and supervise the sale, transfer or the disposition of any real or personal properties by said defendants, and for all other just and proper relief in the premises.

/s/ J. Gregory Garrison
Deputy Prosecuting Attorney for
the Nineteenth Judicial Circuit
City County Building, Room 560
Indianapolis, Indiana 46204

(CERTIFICATE OF SERVICE omitted in printing)

IN THE HAMILTON COUNTY CIRCUIT COURT
CAUSE NO. C83-346

(Title omitted in printing)

STATE OF INDIANA)
) ss:
COUNTY OF HAMILTON)

(Filed September 13, 1983)

MOTION TO CONTINUE

Comes now the Defendant, 4447 CORPORATION, by counsel, Franklin I. Miroff, and moves the Court for a continuance of the deposition as follows:

1. That this matter is substantial and complex.

2. That there are substantial and difficult Fifth Amendment issues.

3. That the Defendant's counsel has just been contacted regarding the depositions.

4. That it is necessary to have at least two (2) weeks to prepare for these depositions.

5. That counsel conflicts on his calendar in that he is trying *Hughes -vs- Hughes* in Marion County Superior Court, Civil Division, Room #3 and *Haberman -vs- Haberman* in Marion County Superior Court, both on September 15, 1983, and it will be impossible for the other counsel to be there on such short notice.

6. That several of the attorneys are from another state and those counsel need at least two to three weeks notice.

WHEREFORE, the Defendant, by counsel, prays for an Order from this Court continuing the deposition and for all other just and proper relief in the premises.

Respectfully submitted,
ANCEL, MIROFF & FRANK, P.C.

By: /s/ Franklin I. Miroff

(CERTIFICATE OF SERVICE omitted in printing)

IN THE
COURT OF APPEALS OF INDIANA
FOURTH DISTRICT

4447 CORPORATION, WORLD VIDEO SYSTEMS, ISSI THEATRE CORPORATION, PLAZA ENTERTAINMENT CENTER and BURTON GORELICK,	)	Interlocutory Appeal From the Hamilton Circuit Court
Appellants (Defendants Below),	)	No. 4-1283 A 415
v	)	(Filed February 2, 1984)
STEPHEN GOLDSMITH, PROSECUTING ATTORNEY FOR NINETEENTH JUDICIAL CIRCUIT,	)	The Honorable Judith S. Proffitt, Judge
Appellee (Plaintiff Below),	)	

ORDER UPON INTERLOCUTORY APPEAL

Comes now 4447 Corporation, World Video Systems, Issi Theatre Corporation, Plaza Entertainment Center and Burton Gorelick, appellants, by counsel, John H. Weston, and Stephen Goldsmith, Prosecuting Attorney for the Nineteenth Judicial Circuit, appellee, by counsel, Richard E. Hendrickson, Deputy Attorney General, and appellants' Motion for Stay (Modification) of Interlocutory Injunction Without Bond Pending Appeal is submitted to the Court, Fourth District. Oral argument is had and the Court being duly advised now grants appellants' Motion for Stay, Conover, J., dissenting.

It is therefore Ordered, Adjudged and Decreed by the Court that the Order heretofore entered by the Circuit

Court of Marion County, The Honorable Anthony J. Metz, Judge Pro Tem presiding, in Cause No. C83-1788, dated August 1, 1983, is hereby modified pending appeal in the following respects:

A. That the Indianapolis Police Department shall forthwith unlock, unseal and release all property within the commercial building at 4266 [erroneously designated 4276] West 38th Street, Marion County, Indiana, which property had heretofore been locked, sealed and secured pursuant to the Order of the Marion County Circuit Court, filed August 1, 1983; and

B. Defendants shall preserve all property at 4266 West 38th Street, Marion County, Indiana, until further order of this Court; defendants shall not transfer or remove from said building any fixtures, cabinets, cameras, audio or video equipment, cash registers or other property until further order of this Court. This paragraph shall not prevent defendants at 4266 West 38th Street, Marion County, Indiana, from transferring or selling books, magazines, newspapers or videotapes. However, until further order of this Court, all other property shall be held by the defendants.

DATED: February 2, 1984

/s/ Paul H. Buchanan
CHIEF JUDGE
Court of Appeals of Indiana

STATE OF INDIANA V.
RONALD W. SAPPENFIELD, *et al.*

RELEVANT DOCKET ENTRIES

Date of Filing	
4/8/85	State of Indiana files informations charging defendants, and each of them, in Counts I, II and III with the offense of Sale or Distribution Obscene Matter; Count IV with the offense of Corrupt Business Influence; Count V, VI and VII with the offense of Sale or Distribution of Obscene Matter; Count VIII with the offense of Corrupt Business Influence together with Affidavits as to probable cause for defendants' arrests.
	Court finds probable cause and orders WARRANT for each of the defendants and fixes bailbond for the defendants, and each of them, in the sum of $7,500.00. Defendants, Fantasy One, Inc. and Fantasy Two, Inc., are to be served warrants by serving resident agent, Ronald W. Sappenfield.
4/10/85	Sheriff files notice that defendant, Ronald W. Sappenfield, has bonded out of jail.
4/19/85	State of Indiana appears by Rodney Shrock. Defendant, Ronald Sappenfield, appears in open court with his counsel, Joseph A. Noel. Defendant is advised of the eight counts of information against him. Defendant, Ronald Sappenfield, waives formal reading of the informations. Said defendant is read the statutes and penalties. Court now enters a plea of Not Guilty and request for jury trial. Court sets omnibus hearing for June 21, 1985 and trial by jury for 9:30 A.M., August 27th, 28th and 29th, 1985.
6/4/85	Richard Kammen of the firm of McClure, McClure, & Kammen, 235 North Delaware, In-

dianapolis, Indiana 46204, Telephone 632-6341, file written Appearance for the defendants. Defendants file Motion to Dismiss Counts IV and VIII of the information, together with Memorandum of Law attached. Time fixed for hearing 9:30 A.M., June 21, 1985. The Court notifies counsel of hearing date by copy of this docket card.

6/14/85 State of Indiana files State's Reply Memorandum to Defendant Ronald W. Sappenfield's Motion to Dismiss.

8/23/85 State of Indiana appears by Rodney Shrock. Defendant appears by counsel. Submitted on defendant, Ronald Sappenfield's motion to dismiss. Arguments heard. Taken under advisement. State of Indiana files Motion for Discovery.

State of Indiana files response to Defendants' Motion for Discovery.

9/18/85 The Court having taken the defendants' Motion to Dismiss under advisement now grants the defendants' Motion to Dismiss as to Counts IV and VIII as per written ruling on Motion to Dismiss.

9/19/85 State of Indiana files Motion to Dismiss as to defendant Connie Sappenfield aka Connie Van Curen. Cause ordered dismissed as to said defendant, only.

11/15/85 Rodney V. Shrock counsel for State of Indiana, files Motion to Correct Errors with the court and with Honorable Dennis H. Parry. Time is fixed for hearing at 1:30 p.m., December 12, 1985. Court notifies Rodney V. Shrock and Joseph A. Noel.

Rodney V. Shrock files Statement of Facts and Grounds upon Which Errors Are Based.

Rodney V. Shrock files copy of Motion to Correct Errors and statement on the Judge.

12/18/85 The court having taken the Motion to correct errors under advisement, now overrules and denies said motion. Court notifies counsel.

12/17/85 State of Indiana files Praecipe for Record of the Proceedings.

IN THE HOWARD SUPERIOR COURT
DIVISION I

CAUSE NUMBER 2630

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

STATE OF INDIANA	)	
	)	
VS.	)	CAUSE NUMBER 2630
	)	
RONALD W. SAPPENFIELD,	)	
CONNIE SAPPENFIELD,	)	(Filed April 8, 1985)
FANTASY ONE, INC., and	)	
FANTASY TWO, INC.	)	

INFORMATION FOR COUNT I

Sale or Distribution of Obscene Matter

(Class A Misdemeanor)

The undersigned, being duly sworn upon oath, says:

That on or about the 29th day of October, 1984, in the County of Howard, State of Indiana, Ronald W. Sappenfield, Connie Sappenfield, and Fantasy One, Inc., did unlawfully, knowingly or intentionally sell or distribute obscene matter to Gordon Tocco to-wit: a magazine entitled "Cum On TV" which depicts on the front cover a male/female hermaphrodite engaging in anal sex and on the back cover depicts a male/female hermaphrodite engaging in oral sex without any restrictions that the average person, applying contemporary community standards, would find the dominant theme of the magazine taken as a whole, appeals to the prurient interest in sex and depicts in a potently offensive way sexual conduct and further the magazine taken as a whole lacks serious literary, artistic, political or scientific value, all of which is contrary to the form

of the Statute in such case made and provided, to-wit: I.C. 35-49-3-1.

/s/ Rodney V. Shrock

Subscribed and sworn to before me this 3rd day of April, 1985.

My Commission Expires:
2-1-85

/s/ Carole L. Harbaugh

NOTARY PUBLIC

Approved by me, /s/ Charles J. Myers
Prosecuting Attorney,
62nd Judicial Circuit

IN THE HOWARD SUPERIOR COURT
DIVISION I

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

STATE OF INDIANA	)	
	)	
VS.	)	CAUSE NUMBER 2630
	)	
RONALD W. SAPPENFIELD,	)	
CONNIE SAPPENFIELD,	)	(Filed April 8, 1985)
FANTASY ONE, INC., and	)	
FANTASY TWO, INC.	)	

INFORMATION FOR COUNT II
Sale or Distribution of Obscene Matter

(Class A Misdemeanor)

The undersigned, being duly sworn upon oath, says:

That on or about the 15th day of November, 1984, in the County of Howard, State of Indiana, Ronald W. Sap-

penfield, Connie Sappenfield, and Fantasy One., Inc., did unlawfully, knowingly or intentionally sell or distribute obscene matter to Gordon Tocco, to-wit: a magazine entitled "Asshole Buddies Special" which depicts on the front cover male persons engaged in anal sexual conduct by the use of a penis or finger and depicts on the back cover a male performing oral sex on the anus of another male without any restrictions that the average person, applying contemporary community standards, would find the dominant theme of the magazine, taken as a whole, appeals to the prurient interest in sex and depicts in a patently offensive way sexual conduct and further the magazine taken as a whole lacks serious literary, artistic, political or scientific value, all of which is contrary to the form of the Statute in such case made and provided, to-wit: I.C. 35-49-3-1.

/s/ Rodney V. Shrock

Subscribed and sworn to before me this 3rd day of April, 1985.

My Commission Expires:
2-1-87

/s/ Carole L. Harbaugh
NOTARY PUBLIC

Approved by me, /s/ Charles J. Myers
Prosecuting Attorney,
62nd Judicial Circuit

IN THE HOWARD SUPERIOR COURT
DIVISION I

STATE OF INDIANA)		
) SS:		
COUNTY OF HOWARD)		
STATE OF INDIANA	)	
	)	
VS.	)	CAUSE
	)	NUMBER 2630
RONALD W. SAPPENFIELD,	)	
CONNIE SAPPENFIELD,	)	(Filed April 8, 1985)
FANTASY ONE, INC., and	)	
FANTASY TWO, INC.	)	

INFORMATION FOR COUNT III
Sale or Distribution of Obscene Matter

(Class A Misdemeanor)

The undersigned, being duly sworn upon oath, says:

That on or about the 3rd day of December, 1984, in the County of Howard, State of Indiana, Ronald W. Sappenfield, Connie Sappenfield, and Fantasy One, Inc., did unlawfully, knowingly or intentionally sell or distribute obscene matter to Gordon Tocco, to-wit: a magazine entitled "Tight Buns" which depicts on the front cover two males engaging in anal sex and masturbation and on the back cover depicts two males masturbating without any restrictions that the average person, applying contemporary community standards, would find the dominant theme of the magazine, taken as a whole, appeals to the prurient interest in sex and depicts in a patently offensive way sexual conduct and further the magazine taken as a whole lacks serious literary, artistic, political or scientific value, all of

which is contrary to the form of the Statute in such case made and provided, to-wit: I.C. 35-49-3-1.

/s/ Rodney V. Shrock

Subscribed and sworn to before me this 3rd day of April, 1985.

My Commission Expires:
2-1-87

/s/ Carole L. Harbaugh
NOTARY PUBLIC

Approved by me, /s/ Charles J. Myers
Prosecuting Attorney,
62nd Judicial Circuit

IN THE HOWARD SUPERIOR COURT
DIVISION I

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

STATE OF INDIANA	)	
	)	
VS.	)	CAUSE
	)	NUMBER 2630
RONALD W. SAPPENFIELD,	)	
CONNIE SAPPENFIELD,	)	(Filed April 8, 1985)
FANTASY ONE, INC., and	)	
FANTASY TWO, INC.	)	

INFORMATION FOR COUNT IV

Corrupt Business Influence

The undersigned, being duly sworn upon oath, says:

That from on or about October 29, 1984 to on or about December 3, 1984, Ronald W. Sappenfield, Connie Sappenfield, and Fantasy One, Inc., in Howard County, State of Indiana, did knowingly or intentionally participate in the activities of an enterprise, to-wit: Fantasyland 1, through a pattern of racketeering activity, to-wit:

A. An offense against I.C. 35-30-10.1-2, in that the defendants did knowingly or intentionally offer to distribute or sell to Gordon Tocco obscene matter, to-wit: the magazine "Cum On TV", all of which occurred in Howard County, State of Indiana on October 29, 1984; and

B. An offense against I.C. 35-30-10.1-2, in that the defendants did knowingly or intentionally offer to distribute or sell to Gordon Tocco obscene matter, to-wit: the magazine "Asshole Buddies Special", all of which occurred in Howard County, State of Indiana on November 15, 1984; and

C. An offense against I.C. 35-30-10.1-2, in that the defendants did knowingly or intentionally offer to distribute or sell to Gordon Tocco obscene matter, to-wit: the magazine "Tight Buns", all of which occurred in Howard County, State of Indiana on December 3, 1984.

All of which is contrary to the form of the Statute in such case made and provided, to-wit: I.C. 35-45-6-2(3).

/s/ Rodney V. Shrock

Subscribed and sworn to before me this 3rd day of April, 1985.

My Commission Expires:
2-1-87

/s/ Carole L. Harbaugh
NOTARY PUBLIC

Approved by me, /s/ Charles J. Myers
Prosecuting Attorney,
62nd Judicial Circuit

IN THE HOWARD SUPERIOR COURT
DIVISION I

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

STATE OF INDIANA	)	
	)	
VS.	)	CAUSE
	)	NUMBER 2630
RONALD W. SAPPENFIELD,	)	
CONNIE SAPPENFIELD,	)	(Filed April 8, 1985)
FANTASY ONE, INC., and	)	
FANTASY TWO, INC.	)	

INFORMATION FOR COUNT V
Sale or Distribution of Obscene Matter

(Class A Misdemeanor)

The undersigned, being duly sworn upon oath, says:

That on or about the 29th day of October, 1984, in the County of Howard, State of Indiana, Ronald W. Sappenfield, Connie Sappenfield, and Fantasy Two, Inc., did unlawfully, knowingly or intentionally sell or distribute obscene matter to Gordon Tocco, to-wit: a magazine entitled "Stud Alley" which depicts on the front cover two males performing oral sex and depicts on the back cover two males performing oral sex without any restrictions that the average person, applying contemporary community standards, would find the dominant theme of the magazine taken as a whole, appeals to the prurient interest in sex and depicts in a patently offensive way sexual conduct and further the magazine taken as a whole lacks serious literary, political or scientific value, all of which is contrary

to the form of the Statute in such case made and provided, to-wit: I.C. 35-49-3-1.

/s/ Rodney V. Shrock

Subscribed and sworn to before me this 3rd day of April, 1985.

My Commission Expires:
2-1-87

/s/ Carole L. Harbaugh
NOTARY PUBLIC

Approved by me, /s/ Charles J. Myers
Prosecuting Attorney,
62nd Judicial Circuit

IN THE HOWARD SUPERIOR COURT
DIVISION I

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

STATE OF INDIANA	)	
	)	
VS.	)	CAUSE
	)	NUMBER 2630
RONALD W. SAPPENFIELD,	)	
CONNIE SAPPENFIELD,	)	(Filed April 8, 1985)
FANTASY ONE, INC., and	)	
FANTASY TWO, INC.	)	

INFORMATION FOR COUNT VI
Sale or Distribution of Obscene Matter

(Class A Misdemeanor)

The undersigned, being duly sworn upon oath, says:

That on or about the 15th day of November, 1984, in the County of Howard, State of Indiana, Ronald W. Sap-

penfield, Connie Sappenfield, and Fantasy Two, Inc., did unlawfully, knowingly or intentionally sell or distribute obscene matter to Gordon Tocco, to-wit: a magazine entitled "Four Play Guys" which depicts on the front cover male persons engaged in oral sex and depicts on the back cover males engaged in oral and anal sex without any restrictions that the average person, applying contemporary community standards, would find the dominant theme of the magazine, taken as a whole, appeals to the prurient interest in sex and depicts in a patently offensive way sexual conduct and further the magazine taken as a whole lacks serious literary, artistic, political or scientific value, all of which is contrary to the form of the Statute in such case made and provided, to-wit: I.C. 35-49-3-1.

/s/ Rodney V. Shrock

Subscribed and sworn to before me this 3rd day of April, 1985.

My Commission Expires:
2-1-87

/s/ Carole L. Harbaugh
NOTARY PUBLIC

Approved by me, /s/ Charles J. Myers
Prosecuting Attorney,
62nd Judicial Circuit

IN THE HOWARD SUPERIOR COURT
DIVISION I

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

STATE OF INDIANA	)	
	)	
VS.	)	CAUSE
	)	NUMBER 2630
RONALD W. SAPPENFIELD,	)	
CONNIE SAPPENFIELD,	)	(Filed April 8, 1985)
FANTASY ONE, INC., and	)	
FANTASY TWO, INC.	)	

INFORMATION FOR COUNT VII
Sale or Distribution of Obscene Matter

(Class A Misdemeanor)

The undersigned, being duly sworn upon oath, says:

That on or about the 3rd day of December, 1984, in the County of Howard, State of Indiana, Ronald W. Sappenfield, Connie Sappenfield, and Fantasy Two, Inc., did unlawfully, knowingly or intentionally sell or distribute obscene matter to Gordon Tocco, to-wit: a magazine entitled "Encounter" which depicts on the front cover two males engaging in mouth to anus sexual contact and on the back cover depicts two males engaging in anal sex without any restrictions that the average person, applying contemporary community standards, would find the dominant theme of the magazine, taken as a whole, appeals to the prurient interest in sex and depicts in a patently offensive way sexual conduct and further the magazine taken as a whole lacks serious literary, artistic, political or scientific value, all of which is contrary to the form of the Statute in such case made and provided, to-wit: I.C. 35-49-3-1.

/s/ Rodney V. Shrock

Subscribed and sworn to before me this 3rd day of April, 1985.

My Commission Expires:
2-1-87

/s/ Carole L. Harbaugh
NOTARY PUBLIC

Approved by me, /s/ Charles J. Myers
Prosecuting Attorney,
62nd Judicial Circuit

IN THE HOWARD SUPERIOR COURT
DIVISION I

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

STATE OF INDIANA	)	
	)	
VS.	)	CAUSE
	)	NUMBER 2630
RONALD W. SAPPENFIELD,	)	
CONNIE SAPPENFIELD,	)	(Filed April 8, 1985)
FANTASY ONE, INC., and	)	
FANTASY TWO, INC.	)	

INFORMATION FOR COUNT VIII

Corrupt Business Influence

The undersigned, being duly sworn upon oath, says:

That from on or about October 29, 1984 to on or about December 3, 1984, Ronald W. Sappenfield, Connie Sappenfield, and Fantasy Two, Inc., in Howard County, State of Indiana, did knowingly or intentionally participate in the activities of an enterprise, to-wit: Fantasyland II, through a pattern of racketeering activity, to-wit:

A. An offense against I.C. 35-30-10.1-2, in that the Defendants did knowingly or intentionally offer to distribute or sell to Gordon Tocco obscene matter, to-wit: the

magazine "Stud Alley" all of which occurred in Howard County, State of Indiana on October 29, 1984; and

B. An offense against I.C. 35-30-10.1-2, in that the Defendants did knowingly or intentionally offer to distribute or sell to Gordon Tocco obscene matter, to-wit: the magazine "Four Play Guys" all of which occurred in Howard County, State of Indiana on November 15, 1984; and

C. An offense against I.C. 35-30-10.1-2, in that the Defendants did knowingly or intentionally offer to distribute or sell to Gordon Tocco obscene matter, to-wit: the magazine "Encounter" all of which occurred in Howard County, State of Indiana on December 3, 1984.

All of which is contrary to the form of the Statute in such case made and provided, to-wit: I.C. 35-45-6-2(3).

/s/ Rodney V. Shrock

Subscribed and sworn to before me this 3rd day of April, 1985.

My Commission Expires:
2-1-87

/s/ Carole L. Harbough
NOTARY PUBLIC

Approved by me, /s/ Charles J. Myers
Prosecuting Attorney,
62nd Judicial Circuit

IN THE HOWARD SUPERIOR COURT
DIVISION I

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

CAUSE NO. 2630

(Title omitted in printing)

(Filed June 4, 1985)

MOTION TO DISMISS

Comes now the defendant, by counsel, and moves the court to dismiss Counts IV and VIII of the information herein for each of the following reasons:

1. The statute upon which the information is based is unconstitutional, as applied in this case, in that said statute, as applied, violates the First, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States of America.

2. The statute upon which the information is based is unconstitutional, as applied in this case, in that said statute, as applied, violates Article I, Sections 3, 4, 9, 12, 13, 14, 16, 17, 21, 23, and 31 of the Constitution of the State of Indiana.

3. The information herein is unlawfully vague.

4. The information herein does not state an offense with sufficient certainty.

5. The facts, as stated in the information herein, do not constitute a public offense.

6. The information herein is duplicitous.

7. There exists a jurisdictional impediment to the conviction of the defendant for the offense charged, to-wit: the defendant has not previously been convicted of any violations of I.C. 35-30-10.1-1, *et seq.*

8. There exists a jurisdictional impediment to the continuation of the charges against the defendant, to-wit: the defendant has never been accorded, pursuant to statute, either notice of, and an opportunity, for the Court to determine whether or not materials obtained by the State of Indiana are probably obscene, as defined and required by I.C. 35-30-10.1-1 *et seq.*

9. The law, as applied, is unconstitutional, in that the defendant was never accorded an opportunity for a prompt hearing on probable obscenity either prior to, or subsequent to, the seizure of the materials, as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

Respectfully submitted,

/s/ Richard Kammen
McCLURE, McCLURE & KAMMEN
235 North Delaware
Indianapolis, Indiana 46204
Telephone: (317) 632-6341
Counsel for Defendant

MEMORANDUM OF LAW

Specifications 1, 2, and 8 of the Defendant's Motion to Dismiss are based upon the failure of the State of Indiana, in both the drafting of the criminal statute under

which the defendant stands charged and the application of this statute, to follow the requirements of the First Amendment to the Constitution of the United States of America, and Article I, Sections 3, 4, 9, 12, 13, 14, 16, 17, 21, 23, and 31 of the Constitution of the State of Indiana.

Several things are clear. All printed matter, all movies, and all publications of any sort are clothed with the presumption that they are legitimate and protected by the First Amendment to the Constitution of the United States of America. *Doran v. Salem Inn,* 422 U.S. 922; *Samel Inn, Inc. v. Frank,* 522 F.2d 1045; *Southeastern Promotions Limited v. Conrad,* 420 U.S. 546 (1975); *Lee Art Theatre v. Virginia,* 392 U.S. 636; *Interstate Circuit, Inc. v. City of Dallas,* 390 U.S. 676; *Jacobellis v. Ohio,* 378 U.S. 184; *Joseph Burstein, Inc. v. Wilson,* 343 U.S. 495; *Roaden v. Kentucky,* 413 U.S. 57; *Bantum Books v. Sullivan,* 372 U.S. 58; *Quantity of Books v. Kansas,* 378 U.S. 205. Even if an individual is arrested and charged with distribution of obscene matter, the matter is still cloaked with the presumption that it is protected, and remains so cloaked unless and until the individual charged is in fact convicted. *Heller v. New York,* 413 U.S. 483. See also *United States v. Thirty-seven Photographs,* 402 U.S. 363; *Freedman v. Maryland,* 380 U.S. 51 (1965). In *Freedman,* the United States Supreme Court said:

> "Because only a judicial determination in an adversary proceeding insures the necessary sensitivity to freedom of expression, only a procedure requiring a judicial determination suffices to impose a valid final restraint." 402 U.S. at 367. See also *Bount v. Rizzi,* 400 U.S. 410, *Tittel Firm Corp. v. Kusek,* 390 U.S. 139.

A judgment that material is in fact obscene does not taint similar items. A judgment that material is obscene taints only that particular item. Quantity of *Books v. Kansas,* 378 U.S. 205; *Bantum Books v. Sullivan,* 83 S.Ct. 639; *Organization for a Better Austin v. Keefe,* 402 U.S. 415; *Carol v. President and Commissioner of Princess Anne County,* 393 U.S. 175.

Similarly, businesses which are convicted of selling obscene material may not be closed, nor may a permit or license be revoked or denied. *Universal Amusement Company v. Vance,* 100 S.Ct. 1156 (1980), 587 F.2d 159; *People ex rel. Busch v. Projection Room Theatre,* 550 P.2d 600 (1976); *General Corp. v. Sweeten,* 320 South 2d 668 (Alabama, 1975); *Kansas v. Motion Picture Entitled "The Bet",* 219 Kansas 63 (1976); *Gulf States Theatres of Louisiana v. Richardson,* 287 S.2d 480 (Louisiana, 1974); *New Riviera Arts Theatre v. Davis,* 219 Tennessee 652 (1967); *Society to Oppose Pornography, Inc. v. Thevis,* 255 S.2d 876; *Giarrusso v. D'Iberville Gallery,* 295 S.2d 891; *State ex rel. Blee v. Mohney Enterprises,* 289 N.E.2d 519 (Ind. App. 1973); *Sanders v. State,* 203 S.E.2d 152 (1974); *State ex rel. Field v. Hess,* 540 P2d; *Commonwealth ex rel. Davis v. Van Emberg,* 347 Atl. 2d 712; *City of Minot v. Central Avenue News, Inc.,* 308 N.W.2d 851; *Parish of Jefferson v. Bayou Landing Limited, Inc.,* 305 S.2d 158 (1977); *Nihiser v. Sendak,* 405 F.Supp. 1124; *Yuclan Enterprises, Inc. v. Arre,* 488 F.Supp. 820; *Avon Forty-Second St. Corp. v. Meyerson,* 352 F.Supp. 994; *Oregon Book Mark Corp. v. Shrunk,* 321 F.Supp. 639; *City of Seattle v. Bitner,* 505 P.2d 126.

Finally, because of its paramount place in the constellation of constitutionally protected freedoms, statutes

which touch upon the exercise of First Amendment rights are carefully scrutinized, and if, on examination, they hinder the exercise of First Amendment rights, they are unconstitutional, both under Federal and State Constitutions, *State v. Kubel,* 172 N.E.2d 45.

State v. Kubel, supra., provides an interesting analysis. In that case, the Indiana Supreme Court said:

> "Article I, Section 9, of the Constitution of Indiana provides 'no law shall be passed restraining the right to speak, write, or print freely on any subject whatso ever; but for the abuse of that right every person shall be responsible.'
>
> The State may, in the proper exercise of the police power, prevent the sale and distribution of obscene matter, but when this is attempted in a manner which tends to restrict the right of free speech or expression, then the right of free speech guaranteed by Article I, Section 9, must be weighed in the balance against the requirement of the public safety and welfare which are asserted by the restriction sought.
>
> When this test is applied to the situation with which we are now confronted, the scales weigh in favor of the right to free speech and free expression.
>
> The imposition of a strict liability by the statute here has the effect of restricting the free interchange of thought and opinion by requiring a bookseller to act at his peril in the sale and distribution of books and periodicals, whether obscene or not obscene. Under such circumstances, the bookseller will restrict and limit the books and periodicals entirely free of any possibility of contaminating matter, which might cause his summary arrest merely for having such items in his store. This type of censorship would result in preventing the sale and distribution of many books and periodicals which a court might finally determine not to be obscene, thereby imposing a censorship exceeding the boundaries which are prescribed by the limits beyond which the police power cannot operate."

When analyzed under the foregoing principles, it is very obvious that, as applied to businesses selling materials protected by the First Amendment, the corrupt business practices act is unconstitutional and violative of the First Amendment of the Constitution of the United States, and Article I, Section 9 of the Constitution of the State of Indiana in several different respects.

It is clear that, absent a conviction for distribution of obscene matter, the statute in question is patently unconstitutional.

Moreover, the statute is unconstitutional when applied to First Amendment related businesses, because it provides none of the required protections guaranteed by the First Amendment to the Constitution of the United States of America.

Because printed and pictorial matter is protected, one who sells such matter has the freedom to probe the outer limits of that which the community will tolerate. *Heller v. New York, supra, Memoirs v. Massachusetts,* 383 U.S. 413 (1966); *Jenkins v. Georgia,* 418 U.S. 153 (1974). The First Amendment allows the individual to challenge the thinking and the feelings of the community. *Memoirs v. Massachusetts, supra.*

Consequently, before an individual may be brought to trial as a result of an allegation that material which he has sold violates the First Amendment, he must be accorded an opportunity to show the judge that the material

is within the ambit of the First Amendment. This is required by statute. I.C. 35-30-10.1-1, *et seq.* See also *Heller v. New York, supra; Quanity of Books v. Kansas, supra; Marcus v. Search Warrant, supra.* Because petitioner has never been accorded such an opportunity, and could not be accorded such an opportunity under this particular statute, the statute, as applied and as written, is unconstitutional as applied to a First Amendment business.

Additionally, because the defendant has not been convicted of distribution of obscene matter, he submits that he cannot be constitutionally charged with racketeering. To allow this prosecution to continue will have a substantial "chilling effect" upon the exercise of First Amendment rights. Perhaps, necessarily, the statute defining obscenity is couched in vague terms. Individual standards may vary from area to area. I.C. 35-30-10.1-1, *et seq.* However, if one, who on two occasions four or five years apart, sells a particular book or material, or two similar books or materials which, in the eyes of some prosecutors, can subject him a charge of corrupt business influence, then clearly acceptable. The net result will be to reduce that which is available to adults to material only suitable for children. (Prohibited by *Butler v. Michigan,* 352 U.S. 380 (1957). The result will be a substantially "chilling effect" upon the exercise of constitutional liberties throughout the State of Indiana.

Under the Kubel doctrine, such an effect clearly would render the statute unconstitutional.

Specifications 3, 4, and 5 are based upon the failure of the statute to specifically inform the defendant of what he is charged.

Among the omissions of the pleading are specific mention of the works which the defendant allegedly sold, which the State believes to violate I.C. 35-30-10.1-1, *et seq.*

For an Information to state a public offense, the offense must be specifically charged in direct and unmistakable terms. If there is any reasonable doubt as to what offense, or if an offense is charged, that doubt must be resolved in favor of the defendant. *Belcher v. State,* 319 N.E.2d 658 (1974). Nothing may be charged by implication. *Hewett v. State,* 177 Ind. 1908; *Carter v. State,* 301 N.E.2d 524 (1973).

Further, the defendant must be informed specifically of the crime charge so that he may prepare a defense. *Loveless v. State,* 166 N.E.2d 864. In *Bruce v. State,* 104 N.E.2d 129, the Indiana Supreme Court said:

> "Where an indictment or affidavit is uncertain or ambiguous, or where its language admits of more than one construction, all reasonable doubts are to be resolved in favor of the accused and it will be construed most strongly against the State. *McNamara v. State* (1932), 203 Ind. 596, 181 N.E.2d 512; *Hunt v. State* (1927), 199 Ind. 550, 159 N.E. 149; *Littell v. State* (1893), 133 Ind. 577, 33 N.E.2d 417."

The principles set forth above are of constitutionally significant proportions. *Smith v. United States,* 360 U.S. 1. Of particultr significance, and particularly instructive, is the case of *Russell v. United States* (1962), 82 S.Ct. 1038. In *Russell,* the United States Supreme Court was faced with a defense claim that the charging papers were constitutionally insufficient and violated the defendant's rights as guaranteed by the Sixth Amendment to the Constitution of the United States of America. The court stated:

> "Where an indictment or affidavit or affidavit is uncertain or ambiguous, or where its language admits of more than one construction, all reasonable doubts are to be resolved in favor of the accused and it will be construed most strongly against the State. *McNamara v. State* (1932), 203 Ind. 596, 181 N.E.2d 512; *Hunt v. State* (1927), 199 Ind. 550, 159 N.E. 149; *Littell v. State* (1893), 133 Ind. 577, 33 N.E.2d 417."

The principles set forth above are of constitutionally significant proportions. *Smith v. United States,* 360 U.S. 1. Of particular significance, and particularly instructive, is the case of *Russell v. United States* (1962), 82 S.Ct. 1038. In *Russell,* the United States Supreme Court was faced with a defense claim that the charging papers were constitutionally insufficient and violated the defendant's rights as guaranteed by the Sixth Amendment to the Constitution of the United States of America. The court said:

> "In a number of cases, the Court has emphasized two of the protections which an indictment is intended to guarantee, reflected by two of the criteria by which the sufficiency of an indictment is to be measured. These criteria are, first whether the indictment, 'contains the elements of the offense intended to be charged, *and sufficiently appraises the defendant of what he must be prepared to meet,*' and secondly, 'in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction.' *Cochran and Sayre v. United States,* 157 U.S. 286; *Rosen v. United States,* 161 U.S. 29; *Hagner v. United States,* 285 U.S. 427; *Potter v. United States,* 155 U.S. 438; *Bartell v. United States,* 227 U.S. 427; *Berger v. United States,* 395 U.S. 78; *United States v. Debrow,* 346 U.S. 374."

The Court went on to say:

> "It is an elementary principle of criminal pleading that where the definition of an offense, whether it be at common law or by statute, 'includes generic terms it is not sufficient that the indictment shall charge the offense in the same generic terms as that definition; but it must state the species and must ascent to particulars.' *United States v. Cruikshank,* 92 U.S. 542. An indictment not framed to apprise the defendant with reasonable certainty of the nature of the accusation against him is defective although it may follow the language of the statute. *United States v. Simmons,* 96 U.S. 360. 'In an indictment upon a statute it is not sufficient to set forth the offense in the words of the statute unless those words of themselves fully, directly and expressly, without any uncertainty or ambiguity, set forth all of the elements necessary to constitute the offense to be punished.' *United States v. Carll,* 105 U.S. 611."

The Court, in *Russell,* stated that there is yet a third reason for the requirement of specificity. The Court said:

> "It has long been recognized that there is an important corollary purpose to be served by the requirement that an indictment set out 'the specific offense coming under the general description' with which the defendant is charged.' This purpose, as defined in *United States v. Cruikshank,* 92 U.S. 542, is 'to inform the Court of the facts alleged so that it may decide whether they are sufficient in law to support a conviction, if one should be had.'"

The acts and intent that make up the crime must be set forth in the indictment and information with reasonable particularity of time, place, and circumstances. *United States v. Cruikshank, supra; Flying Eagle Publications, Inc. v. United States* (1960), 273 F.2d 799.

There are several reasons why specificity is required in criminal pleadings. These reasons are the requirement that the defendant knows specifically what the State claims he did. Additionally, it is required that the State be committed to a single theory of prosecution. As a corollary to the second reason, specificity is required that the State be committed to a single theory of prosecution. As a corollary to the second reason, specificity is required so that the Defendant may properly interpose the defense of double jeopardy to a subsequent charge.

It has been held that an information is too vague if the State could "change theories in midstream". Under the information here, the State clearly could change theories. For example, the State could claim that the predicate offenses were committed on August 16 and 17, 1982, and that the matter involved were "Debbie Does Dallas" and "Deep Throat." However, the State could change its theory at a subsequent time and claim that the predicate offenses were committed on August 19 and 20, 1982, and the works claimed to be obscene are "Playboy" and "Penthouse". Neither the defendant nor the Court has any way of knowing at this time the State's theory, and consequently, the State is not locked into such a theory. Similarly, the defendant could not, at a subsequent point, interpose double jeopardy. Because the defendant is charged with owning an adult bookstore, we may presume that he sold several different works each day encompassed by the time frame set out by the State. There would be locked in to a particular work, and consequently repeatedly charge the defendant under the same information, and the defendant would have no way of interposing his defense of double jeopardy. Thus, the information violates the Fifth

and Fourteenth Amendments to the Constitution of the United States of America.

Because the Information does not comply with the requirement of the statute, it is, of course, unlawfully vague.

The defendant has alleged in his Motion to Dismiss that the statute upon which the Information is based, that is I.C. 35-46-6-2, is unconstitutional, both on its face and as applied. In order to analyze this claim, the defendant would respectfully restate several fundamental propositions: a criminal statute is void for vagueness under the due process clause of the Fourteenth Amendment to the Constitution of the United States, if it fails to contain "ascertainable standards of guilt." *Winters v. New York* (1948), 333 U.S. 507; *State v. Kubel,* 172 N.E.2d 45; (Indiana citation).

The proper standard for determining if a criminal statute is vague is found in *Conolly v. General Construction Company* (1926), 269 U.S. 385, and *Grayned v. Rockford* (1972), 408 U.S. 104. In *Conolly v. General Construction Company, supra,* the United States Supreme Court said:

> "The terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well recognized requirement consonant alike with ordinary notions of fair play and the solid rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."

The standard was further examined in *Grayned v. Rockford*, wherein it was explained:

> "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the intendent dangers of arbitrary and discriminatory application.

I.C. 35-45-6-2 must be reviewed against this constitutional background. This statute provides:

(a) A person:

> (1) who has knowingly or intentionally received any proceeds *directly or indirectly derived* from a pattern of racketeering activity, and who uses or invests those proceeds or the proceeds derived from them to acquire an interest in real property or to establish or to operate an enterprise;
>
> (2) who through a pattern of racketeering activity, knowingly or intentionally acquires or maintains, either directly or indirectly, an interest in or control of real property or an enterprise; or
>
> (3) who is employed by or associated with an enterprise, and who knowingly or intentionally

> conducts or otherwise *participates in the activities of that enterprise* through a pattern of racketeering activity;
>
> commits corrupt business influence, a Class C Felony.

Racketeering activity, as defined by I.C. 35-45-6-1, includes, among other things, violations of any of the securities laws, violations of certain prohibitions against sale of obscene materials, promoting prostitution, promoting professional gambling, drug offenses, and the like.

The complexity of I.C. 35-46-6-2 is readily apparent. When the individual components of this statute are analyzed, its unconstitutionality as a whole is readily apparent.

Where there is ambiguity in a criminal statute, all doubts are resolved in favor of the defendant. *U.S. v. Bass* (1971), 404 U.S. 336.

Of primary import is the question of the required scienter. The statute appears to prohibit the doing or intentional receipt of proceeds, either directly or indirectly derived from a pattern of racketeering activity. The statute does not require, however, that the individual receiving those proceeds be "a member" of the racketeering organization. Thus, one who sells eggs to a restaurant known to be controlled by a racketeering activity, might render himself liable under this statute. This is especially so if, having saved the profits from the egg business, he buys a home or continues to operate his completely legal sole proprietorship. Similarly, one rendering unquestionably permissible services to a business accused of racketeering might find himself caught up under this statute.

Because men of ordinary intelligence could not see, at the time they do certain acts, that they might be violating the law, the statute is unconstitutional. Similarly, the clerk at a liquor store, who happens to unknowingly deliver to a state legislator a bribe, is employed or associated with an enterprise and does knowingly or intentionally participate in the activities of that enterprise through a patter of racketeering activity, even though he may have been unaware of what he was doing.

Clearly, as written, the scienter element under I.C. 35-45-6-2, is not limited to activity undertaken to facilitate illegal activities of a racketeering enterprise. This is important. A racketeering enterprise may engage in many activities, some of which are not, in and of themselves, illegal.

Therefore, the defendant submits that the statute fails to specify, with reasonable clarity, specifically what kinds of activity it prohibits and is therefore unconstitutionally vague. It is, of course, fundamental that no one may be required, at peril of life, liberty or property, to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the state commands or forbids. *Lanzetta v. New Jersey* (1939), 306 U.S. 451.

The defendant has previously alluded to a second problem, which is that there is no requirement that an individual know that his actions are a patter of racketeering activity. As indicated, a seller, one who is a vendor to an enterprise which happens to be participating in racketeering activities, may be obtaining proceeds indirectly from said activities, and may find himself within the ambet of this statute.

The vague language of the statute thus may subject an individual to criminal sanctions for activities, the legality of which cannot be determined solely by the actor's conduct, but must be determined by factors which a person may be unaware of at the time. Such a statute violates due process. It lacks the ascertainable standards that give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden. *U.S. v. Harris* (1954), 347 U.S. 612. A second example is perhaps appropriate. As discussed elsewhere in this memorandum, I.C. 23-2-1, *et seq.*, provides several hundred different acts, the doing of which or the failure to do, might constitute a criminal violation.

One who is a secretary for a business which is systematically violating the technical aspects of I.C. 23-2-1, is deriving, indirectly, proceeds from a patter of racketeering activity. Should that individual choose to purchase a home, or perhaps rent an apartment (a lease is an interest in real property), might find themselves subjected to prosecution under this statute. Yet, until their arrest, their conduct would have been so innocent that they would have had no way of knowing, in any manner, that they were violating the law.

Unlike traditional forms of conspiracy, which require active participation, the racketeering statute provides mere employment or "association." Additionally, the statute fails in any manner to distinguish between the principles in the racketeering business and mere employees or associates. As such, the statute is unconstitutionally vague.

Finally, the term "association" does not lend itself to a sufficiently precise definition to be a permissible standard of criminal liability.

Friends are often associates. Clearly a secretary is associated with a business. Clearly a vendor may be associated with a business. All of those may have knowingly received proceeds directly or indirectly derived from a pattern of racketeering activity. Yet, their conduct may have been completely innocent.

Finally, the term "pattern of racketeering activity" is unconstitutionally vague. The statute defines "pattern of racketeering activity" as:

> "at least two incidents of racketeering activity that have the same or similar intent, result, accomplice, victim, method of commission, or that are otherwise interrelated by distinguishing characteristics that are not isolated incidents. However, the incidents are a pattern of racketeering activity only if at least one of the incidents occurred after August 31, 1980, and if the last of the incidents occurred within five years after a prior incident of racketeering activity.

When analyzed, it is obvious that this definition is not constitutionally acceptable. For example, does the phrase "two incidents of racketeering activity that have the same or similar intent" mean traditional criminal scienter, such as knowing or wilful, or the intent to accomplish a certain goal, *e.g.*, make money. The same problem exists with the phrase "result, accomplice, victim, or method of commission." What is a similar result? What is a similar accomplice? What is a similar victim?

One who sells a copy of "Hustler" on September 1, 1980, and who, on September 1, 1984, sells a second copy of "Hustler" may have been deemed to have violated I.C. 35-30-10.1-2 (Distribution of Obscene Matter). Those incidents, while seemingly isolated, are no so isolated as to be

outside the prohibition of the racketeering activity. While four years might seem to be isolated apparently in Indiana this is not the case. They would probably have the same or similar intent; i.e., to sell the magazine; the same or similar result, i.e., to derive proceeds from that sale; and the same or similar method of commission, i.e., handing the magazine across a counter to a customer and taking his money. Yet, the clerk who sold these two issues of "Hustler" would in no manner have any reason to think that he was elevated to the status of a senior member of a racketeering organization.

Additionally, because the statue purports to allow the trial of several allegations for which the Statute of Limitations may have passed, which are undefined, and for which one might not have notice that they were of sufficient seriousness as to be a Class C Felony, the statute denies due process and is unlawfully vague.

Respectfully submitted,

/s/ Richard Kammen

McCLURE, McCLURE & KAMMEN
235 North Delaware
Indianapolis, Indiana 46204
Telephone: (317) 632-6341

Counsel for Defendant

(Certificate of Service omitted in printing.)

IN THE HOWARD SUPERIOR COURT
DIVISION I

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

CAUSE NO. 2630

(Title omitted in printing.)

STATE'S REPLY MEMORANDUM TO DEFENDANT RONALD W. SAPPENFIELD'S MOTION TO DISMISS

The Indiana statute pertaining to criminal prosecutions for Racketeer Influenced and Corrupt Organizations (RICO) is I.C. 35-45-6-1 *et seq.* This criminal RICO statute is patterned after the Florida statute, Fla. Stat. Ann. § 895-01 (West Supp. 1982). Both the Indiana and Florida statutes are modeled upon the Federal Statute which is found at 18 U.S.C. § 1961 *et seq.* Very little Indiana case law exists on criminal RICO prosecutions, but the Florida and Federal case law are often on point.

Defendant Ronald W. Sappenfield has filed a Motion to Dismiss raising a number of constitutional and jurisdictional grounds. These will generally be considered in the same order they appear in his Motion. Attention will be given to whether any of these grounds are relevant to either the RICO statute, itself, or to I.C. 35-30-10.1-1 *et seq.* which governs to the sale or distribution of obscene materials, and which statute is a specified offense upon which a "pattern of racketeering activity" can be established.

I

Do either of these statutes violate the First, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States of America? No, they do not. The First Amendment pertains to freedom of speech and freedom of worship. Nothing in the criminal RICO statute deals with either of these liberties; therefore, if any objection under the First Amendment is to be made, it must arise under the obscenity statute. Indiana case law applies. The Indiana obscenity statute, I.C. 35-30-10.1-1 *et seq.*, has been upheld in *Ford v. State* (1979), — Ind.App. —, 394 N.E.2d 250 against First Amendment challenge.

Do either of the statutes violate the Fifth Amendment? No, they do not. The Federal RICO statute upon which Indiana's is based was upheld against both a Fifth and Eighth Amendment challenge in *U.S. v. Grande* (4th Cir.1980) 620 F.2d 1026; *Cert denied sub.nom. Berg v. U.S.* (1980), 449 U.S. 919. The obscenity statute was upheld against Fifth Amendment attack in *Riley v. State* (1979), 389 N.E.2d 367 and *Ford v. State, supra.*

Do either statutes violate the Sixth Amendment? No, they do not. Neither of these statutes deny any procedural or substantive right guaranteed to the accused by the Sixth Amendment. Since neither of these statutes pertain to "suspect classes" of individuals, it is difficult to justify any violation of the Fourteenth Amendment.

II

Do either of these statutes violate Article I, of the Constitution of the State of Indiana? No, they do not. Defendant has cited a large number of sections contained in Article I of the Indiana Constitution, none of which per-

tain, in any way, to the validity of a Criminal RICO prosecution, in a general way. It appears that the only possible application of Article I to this case, in any way whatsoever, could only arise under Section 9, Article I, which provides as follows:

> Section 9: Free speech and writing. No law shall be passed, restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, or any subject whatsoever: but for the abuse of that right, every person shall be responsible.

If the obscenity statute is not unconstitutional under the First Amendment of the U.S. Constitution, it is not unconstitutional under Article 1, Section 9 of the Indiana Constitution.

III

Is the criminal information herein unlawfully vague, or does it fail to state an offense with sufficient certainity? The answer to both questions is "No". The criminal informations are specific, not only as to the specific manners in which the Defendant engaged in conduct prescribed by the RICO statute, but also as to the specific acts of Defendant constituting the "pattern of racketeering activity". The Defendant is not correct in his general allegation that the facts contained in the charges fail to state a public offense.

IV

Are the informations duplicitous, or are the charges multiplicitas? Each information filed requires entirely different elements to be proven for conviction. Defendant's contention is spurious.

V

The Defendant's belief that a prior conviction for violation of I.C. 35-30-10.1-1 *et seq.* is a jurisdictional requirement for prosecution under the RICO statute is misplaced. I.C. 35-45-6-1(d) speaks for violations of any one of several listed statutes; there is no statutory requirement for convictions under the listed statutes.

VI

The Defendant feels that he should be afforded a preliminary determination of obscenity, apparently similar to the procedure outlined in I.C. 35-30-10.1-6, as a constitutional and jurisdictional requirement prior to prosecution. His argument is not well-taken.

I.C. 35-30-10.1-6 provides a preliminary procedure for determination of probable obscenity prior to arrest for violation of the obscenity statute. This section is triggered by the State if the questioned material is seized by the State, but by request of the Defendant if the material was obtained by purchase. In this instance, the material was acquired by purchase, and the Defendant has failed to request any such preliminary hearing, this waiving any right to it. (For a similar example involving a local ordinance containing such a preliminary hearing mechanism, see: *Massey v. City of Mishawaka* (19—), 378 N.E.2d 14.

The Defendant's reliance on these grounds is also misplaced for the simple reason that this case is *not* a prosecution under I.C. 35-30-10.1-1 *et seq.*, and Defendant was not arrested under that statute for these charges. This is a RICO prosecution. The most important constitutional difference is simply that this prosecution does not involve

prior restraint, which is the heart and soul of the First Amendment considerations for which the preliminary hearing is required, if seizure occurs under the obscenity statute.

———o———

CONCLUSION

The Defendant's Motion to Dismiss has no merit and should be denied.

Respectfully submitted,

/s/ Rodney V. Shrock,
RODNEY V. SHROCK,
DEPUTY PROSECUTING ATTORNEY
62nd Judicial Circuit
Howard County Courthouse
Kokomo, Indiana 46901
Telephone: 1-317-456-2230

(Certificate of Service omitted in printing.)

IN THE HOWARD SUPERIOR COURT
1985 TERM

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

STATE OF INDIANA

vs.

RONALD W. SAPPENFIELD, CONNIE SAPPENFIELD, FANTASY ONE, INC. AND FANTASY TWO, INC.
CRIMINAL CAUSE NO 2630

(Filed September 18, 1985)

RULING ON MOTION TO DISMISS

The defendants are charged in Counts IV & VIII with violation of Indiana Code 35-45-6-2(3). It reads as follows:

> "a person: (3) who is employed by or associated with an enterprise, and who knowingly or intentionally conducts or otherwise participates in the activities of that enterprise through a pattern of racketeering activity; commits Corrupt Business Influence, a class C felony."

The defendants are charged with two (2) counts of Racketeering by the sale or distribution of obscene materials as defined in Indiana Code 35-30-10.1-2.

"Racketeering activity" is defined as follows:

> " . . . . to commit, to attempt to commit, or to conspire to commit a violation . . . . I.C. 35-30-10.1-2 . . . ."

> "Pattern of Racketeering activity means engaging in at least two (2) INCIDENTS (emphasis supplied) of racketeering activity . . . ."

The Constitution of the United States of America, by its First Amendment, offers protection to printed matters, movies and publications by the presumption that they are legitimate.

There must be a judicial determination, in an adversary proceeding, that these items are outside the scope of protection before a valid restraint may be imposed upon this fundamental right.

The defendant argues various points in support of their motion to dismiss and requests of this court a close scrutiny of this statute because of the possible "chilling effect" upon First Amendment rights.

The defendants in this cause have not been convicted of sale or distribution of obscene material. In fact, they have been charged with such an offense simultaneously herewith. The material alleged to have been sold or distributed has yet to be determined to be prohibited or protected. No trial has taken place for a jury to determine the "prevailing community standard".

The Racketeer Influence and Corrupt Organization Statute (R.I.C.O.) allows for the prosecutor to determine that the material violates current standards of the community and that merely purchasing on two (2) occasions fulfills the statutory requirement of "two incidents" of activity.

What constitutes "two incidents of *activity*"? Certainly it must be more than merely distributing or selling written material which has not been determined by a judicial proceeding to be unlawful.

In *Conolly v. General Construction Co.* (1926), 269 U.S. 385, it is stated

> "The terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well recognized requirement consonant alike with ordinary notions of fair play and the solid rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."

Therefore, this Court finds the defendants' argument is well founded and this Court now finds that Indiana Code 35-45-6-2(3), as it applies to a violation of Indiana Code 35-30.10.51-2, is unconstitutionally vague and violates the due process clause of the Fourteenth Amendment to the Constitution of the United States, and therefore grants the defendants' Motion to Dismiss as to Counts IV and VIII.

DATED THIS 18th DAY OF SEPTEMBER, 1985.

/s/ Dennis H. Parry
DENNIS H. PARRY
JUDGE, HOWARD SUPERIOR COURT

IN THE
COURT OF APPEALS OF INDIANA
FIRST DISTRICT

STATE OF INDIANA,	)	
	)	
Plaintiff-Appellant,	)	
	)	
vs.	)	
	)	No.
RONALD W. SAPPENFIELD,	)	34A02-8603-CR-74
CONNIE SAPPENFIELD,	)	
FANTASY ONE, INC. and	)	
FANTASY TWO, INC.,	)	
	)	
Defendants-Appellees.	)	

APPEAL FROM THE HOWARD
SUPERIOR COURT DIVISION I

The Honorable Dennis H. Parry, Judge

Cause No. 2630

RATLIFF, C.J.

STATEMENT OF THE CASE

The State of Indiana appeals the dismissal of two informations charging the Sappenfields with violation of Indiana Code section 35-45-6-2, Indiana RICO statute. We reverse.

FACTS

As a result of an investigation into adult bookstores in Howard County, law enforcement officers purchased

several magazines at two stores allegedly owned or operated by Ronald and Connie Sappenfield. The magazines contained graphic photographs of heterosexual and homosexual activity. The Sappenfields were charged with violating Indiana's obscenity statute, Indiana Code section 35-49-1-1 *et seq.* Several Howard County residents examined the magazines and gave verified statements to the effect that the magazines were obscene. The Sappenfields have not been tried or convicted on any of the six allegations of distributing obscene matter. The prosecuting attorney also alleged a pattern of criminal activity arising out of the distribution of the same obscene matter pursuant to the Indiana Corrupt Business Influence statute (RICO), Indiana Code section 35-45-6-2.

On June 4, 1985, the Sappenfields moved to dismiss the two counts based on Indiana's RICO statute arguing RICO was unconstitutionally vague and violative of the 14th Amendment. On September 18, 1985, the trial court found that RICO could not be constitutionally applied to violations of Indiana's obscenity statute. Thereafter, the state perfected this appeal.

ISSUE

Whether the trial court erred in granting the Sappenfields' motion to dismiss in ruling that Indiana's RICO statute, I.C. § 35-45-6-2, as it applies to a violation of Indiana's obscenity statute, I.C. § 35-49-1-1 *et seq.*, is unconstitutionally vague and violative of the Due Process Clause of the Fourteenth Amendment.

DISCUSSION AND DECISION

The Indiana RICO statute, as enacted by the legislature in 1980, is essentially patterned after the federal anti-racketeering laws. *See Alvers v. State* (1986), Ind. App., 489 N.E.2d 83, *trans. denied;* 18 U.S.C.A. sections 1961-1968 (West 1984). Indiana Code section 35-45-6-2(a) states:

> "A person:
>
> (1) Who has knowingly or intentionally received any proceeds directly or indirectly derived from a pattern of racketeering activity, and who uses or invests those proceeds or the proceeds derived from them to acquire an interest in real property or to establish or to operate an enterprise;
>
> (2) Who through a pattern of racketeering activity, knowingly or intentionally acquires or maintains, either directly or indirectly, an interest in or control of real property or an enterprise; or
>
> (3) Who is employed by or associated with an enterprise, and who knowingly or intentionally conducts or otherwise participates in the activities of that enterprise through a pattern of racketeering activity; commits corrupt business influence, a Class C felony."

"'Racketeering activity' means to commit, to attempt to commit, or to conspire to commit a violation, or aiding and abetting in a violation" of any of several enumerated predicate offenses, including violation of the obscenity statute. Indiana Code section 35-45-6-1. A "pattern of racketeering activity" means "engaging in at least two [2] incidents of racketeering activity that have the same or similar intent, result, accomplice, victim, or method of commission . . . ." I.C. § 35-45-6-1. The purpose of the federal RICO statute, after which the Indiana statute is

patterned, is "to provide new weapons of unprecedented scope for an assault upon organized crime and its economic roots." *Russello v. United States* (1983), 464 U.S. 16, 26, 104 S. Ct. 296, 302, 78 L. Ed. 2d 17, 26.

Recently, in a factually similar case, the Indiana Supreme Court addressed the very issue before us today:

> "Before addressing the questions certified for interlocutary appeal, we must analyze the issue found by the Court of Appeals to be dispositive, namely whether the RICO/CRRA statutory scheme as it pertains to the predicate offense of obscenity violates the First and Fourteenth Amendments to the United States Constitution. That analysis begins with the proposition that an act of the legislature must be afforded a presumption of constitutionality. *Ruge v. Kovach* (1984), Ind., 467 N.E.2d 673; *Johnson v. St. Vincent Hospital, Inc.* (1980), 273 Ind. 374, 404 N.E. 2d 585."

4447 Corp. v. Goldsmith (filed March 2, 1987), Ind. No. 29S04-8703-CV-270, slip op. at 7.

> "Both the federal and Indiana RICO statutes delineate predicate offenses which underlie an allegation of a pattern of racketeering activity. The Indiana RICO statute as originally enacted included obscenity violations as a predicate offense. While the federal RICO statute did not initially contain the predicate offense of obscenity violations, in 1984 Congress amended the statute to include as a predicate offense 'any act . . . involving . . . dealing in obscene matter . . . which is chargeable under State law and punishable by imprisonment for more than one year.' 18 U.S.C.A. § 1961(1)(A) (West Supp. 1986). The statute was further amended to include 'any act which is indictable under . . . title 18, United States Code . . . sections 1461-1465 (relating to obscene matter).' 18 U.S.C.A. § 1961(1)(B) (West Supp. 1986).

"Given the clear legislative purpose in enacting these anti-racketeering statutes, that purpose, in the context of alleged obscenity violations, cannot be specifically construed to represent an attempt to restrain the sale or distribution of expressive materials. The legislative attack on racketeering activity is not, as appellants contend, merely a semantic device intended to circumvent well-established First Amendment doctrine.

"Obscenity does not come within the area of constitutionally protected speech or press. *Miller v. California* (1973), 413 U.S. 15, 93 S. Ct. 2607, 37 L. Ed. 2d 419; *Roth v. United States* (1957), 354 U.S. 476, 77 S. Ct. 1804, 1 L. Ed. 2d 1498. Our legislature, as has Congress, has determined that obscenity violations should be one of the underlying offenses which may constitute racketeering activity as defined in the RICO statute. We must take heed of that legislative intent.

> "We believe the overall purpose of the RICO statute is as applicable to obscenity violations as it is to the other enumerated predicate offenses which have no conceivable First Amendment ramifications."

4447 Corp., slip op. at 9-10.

> "We hold that the RICO/CRRA statutes as they pertain to the predicate offense of obscenity do not violate the First and Fourteenth Amendments of the United States Constitution."

Id. at 12. The Supreme Court went on to determine that prior convictions for the underlying offenses are not required to prove a pattern of racketeering activity under I.C. § 35-45-6-2.

In light of this recent supreme court decision, the State's position is clearly correct. Indiana's RICO statute is not unconstitutional as applied to the State's obscenity statute. Therefore, the trial court erred in granting the

Sappenfields' motion to dismiss regarding the counts based on the RICO statute.

We therefore reverse the judgment and remand for proceedings consistent with this opinion.

ROBERTSON, J. and NEAL, J., concur.

INDIANA COURT OF APPEALS'

Cause No. 34A02-8603-CR-74

STATE OF INDIANA -V- SAPPENFIELD, RONALD & CONNIE

You are hereby notified that the COURT OF APPEALS has on this day 5/15/87 APPELLEE'S PETITION FOR REHEARING DENIED. GEORGE B. HOFFMAN, JR., ACTING CHIEF JUDGE.

WITNESS my name and the seal of said Court, this 15th day of MAY, 1987.

/s/ Daniel Heiser

Clerk Supreme Court, Court of Appeals and Tax Court

INDIANA SUPREME COURT

STATE OF INDIANA -V- SAPPENFIELD, RONALD & CONNIE

You are hereby notified that the COURT OF APPEALS has on this day 8/17/87 APPELLEE'S PETITION TO TRANSFER IS HEREBY DENIED, WITHOUT OPINION. SHEPARD, C.J., DEBRULER, J. VOTES TO GRANT.

WITNESS my name and the seal of said Court, this 17th day of AUGUST, 1987.

/s/ Daniel Heiser

Clerk Supreme Court, Court of Appeals and Tax Court